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EF
AGA
CHK

Port of Lincolnshire

Hillbrook Hundred

Part of Huntingdonshire

Higham Ferris Hundred.

1. NASSABURGH HUNDRED.
2. VILL OF BURGH.
3. POLEBROOK HUNDRED.
4. NAVISFORD HUNDRED.
- 5.5. NORTH NAVISLAND.
6. SOUTH NAVISLAND.
7. HUXLOE HUNDRED.
8. VILL OF THINGDON.

HISTORY OF THE
Liberty of Peterborough

AND THE
JURISDICTION OF THE JUSTICES
OF GAOL DELIVERY

FOR
The Hundred of Nassaburgh.

A Reprint of Articles in
"FENLAND NOTES AND QUERIES,"

contributed by
LOUIS B. GACHES, LL.M., B.A.,

Of the Honourable Society of the Inner Temple.

PETERBOROUGH:
PRINTED AND PUBLISHED BY GEO. C. CASTER, MARKET PLACE.
1905.

PREFACE.

The territorial criminal jurisdiction of a Saxon abbot which has survived the Conquest and the Reformation is worthy of the attention of the magistrate, the lawyer, and the layman. The records of seven centuries are available to illustrate the history of the Monastery of Peterborough, the administration of justice within its domain, and the condition of the inhabitants. *The Liberty of Peterborough is the only county franchise which excludes the authority of King Edward VII.'s Justices of Gaol Delivery.*

It is to explain the origin of the authority of the Justices of the Liberty to deliver the prisoners in its Gaol, the royal charters from which that authority springs, and the King's Commissions by virtue of which it is now exercised, that the publisher has undertaken to publish this short history of that remarkable jurisdiction which has so well stood the test of time and seems likely to endure from reign to reign : for by the Demise of the Crown Act, 1891, the Commissions

of Queen Victoria, by virtue of which the Liberty Justices delivered the Gaol, are continued in force; and those Justices will continue from time to time as occasion may require to deliver the prisoners in the Liberty Gaol with all powers of the King's Justices of Gaol Delivery.

ERRATUM.

Page 23, line 10 from top, *for* 1642 *read* 1442.

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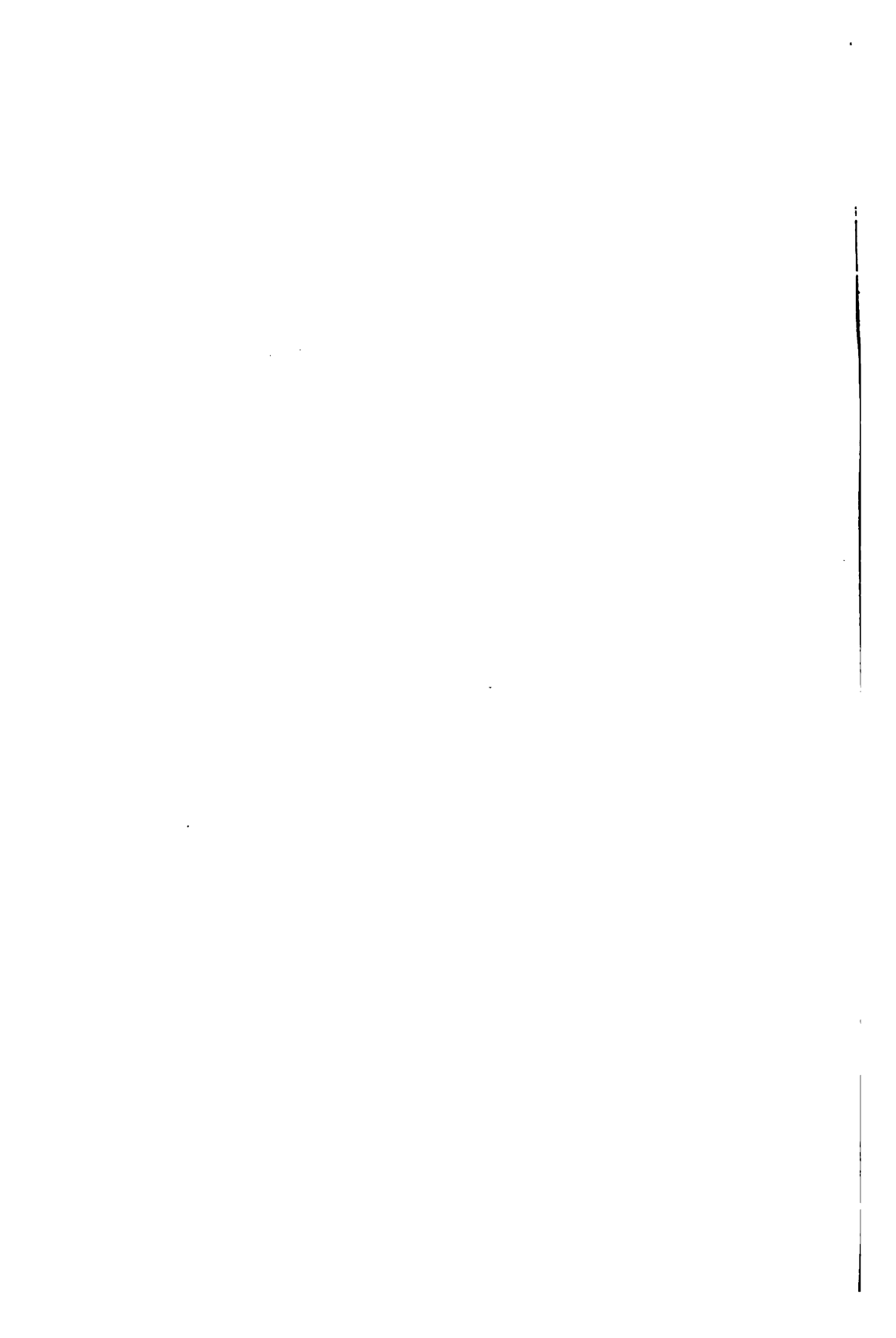
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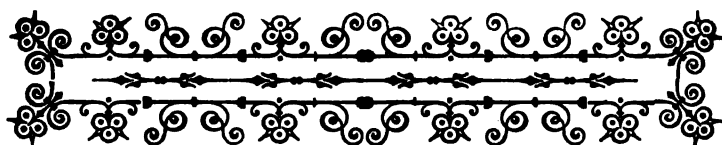
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THE LIBERTY OF PETERBOROUGH.



CHAPTER I.

The Liberty of the Eight Hundreds. King Edgar's Charter, A.D. 972. A Dispute with the Sheriff, A.D. 1275. Forfeits of Felons and Fugitives. A Gaol Delivery, A.D. 1424. The Commissions of the Liberty Justices.



CHARTERS and confirmations of liberties, privileges, and dignities were granted by the Kings of England in favor of the Abbots and Convent of Burgh Saint Peter, from Saxon times till A.D. 1540.

In form, charters vary from letters patent in the salutation clause which is addressed to Archbishops, bishops, abbots, earls, and barons, and by the enumeration of witnesses at the end of the attesting clause. Royal Letters Patent are issued by the Lord Chancellor or Lord Keeper, with the great seal attached, in the name of the King. In Saxon times the Convent exercised in their Liberty of the Eight Hundreds

criminal jurisdiction, exclusive of that of the Sheriff of the Shire of Northampton. King Edgar's Charter, A.D. 972, bears no doubtful meaning. It grants "*villam quoque Undale cum toto jure adjacentium quod Ethenhundred anglie nominatur donamus quatinus nec rex nec comes nec vicecomes ulla dominatione occupare presumat.*" To the like effect is the Charter of Henry II., which grants and confirms to the Abbot and Convent "*hundreds eciam sua Eyhtehundred cum omnibus libertatibus suis*"; and those of Kings Richard, John, and Henry III. are to the like effect; indeed, each charter is taken verbatim from that granted in the preceding reign. The Eight Hundreds comprised Nassaburg and the vill of Burgh, Polebroke, Navisford, Huxlow and the vill of Thingden, North Navislund and South Navislund. The last two were merged in the hundred of Huxlow in the reign of Edward I.

The common gaol was at Peterborough, within the precincts of the abbey, and from earliest times there was issued one commission of gaol delivery of all prisoners from the eight hundreds.* The prison was little used and ruinous, but the Abbot was jealous of his privileges and resented an encroachment by the Sheriff, who, in A.D. 1275, when a riot with murder was perpetrated in Nassaburgh, seized and conveyed the offenders to Northampton. The Peterborough Chronicle† gives a full account of the affair. The case was this:—"One Henry Sampson, clerk, who owned land and a house in the town of Wittering of the fee of Hugo Ridel, enfeoffed a number of religious without the consent of the lord of the fee, who, when he heard of it, having assembled a large number of men from the Abbot's Liberty, by force and with arms entered into possession, when it happened that one of the tenants of the Abbot, who was on the side of Henry Sampson, was killed and his wife laid a criminal appeal in the County of

* Commissions are endorsed on the patent rolls 3 Edward I., A.D. 1273. The Justices were Geof. de la Mare, Geof. de St. Maur, Roger de la Hide, John de Helpeston.

† *Chron. Petroburgense*. The MS. belongs to the Society of Antiquaries. It was printed by the Camden Society in 1849.

Northampton against 29 men of the Liberty for the death of her husband.* Thereupon Robert de Scefeud steward of the Liberty proceeded to Northampton and claimed the release of the prisoners to have them adjudged at Peterborough. And after many disputes trials and expences he prevailed. For this reason Gilbert de Kirkeby the sheriff with all his might assailed the Liberty." The Abbot boldly pursued the privilege of his house. In A.D. 1275, the King sent his mandate to the Sheriff forbidding him to proceed to the outlawry of the prisoners at Peterborough for the death of Wolnoth de Kempeston as the Abbot claimed to have the Liberty; that prisoners detained there for any trespasses whatsoever ought to be adjudged there. The goods of fugitives and felons hanged within the Liberty were forfeited to the Abbot. From 1274 to 1280 the account of forfeits of felons hanged and fines for murder are as follows:—†

NASSUS BURGI.

Burgus—de villata de Burgo de catallis Johannis le Lavendere fugitivi.....	xij ^s	ix ^d
de catallis Gilberti de Estfelde, felonis fugitivi		xliij ^d
de catallis Johannis Sleto felonis	ij ^s	
de catallis Thome le Rede, latronis suspensi		vi ^d
Upton—de catallis Thome Scot fugitivi	ij ^s	
de catallis Willelmi Notting qui occidit uxorem suam ...	xv ^s	
de catallis Johannis Stagge latronis suspensi	liij ^u	vi ^s
Bernake—de catallis Johannis de Everdona qui ibidem abjuravit regnum	ij ^s	
de catallis Thome de Stiroke qui abjuravit regnum	ij ^s	
Wytheringtona—de catallis Reyneri de Depinge qui abjuravit regnum.....		vi ^s
de catallis Johannis de Derby qui abjuravit regnum.....	iiij ^s	
Marham—de catallis Roberti Capellani felonis	xliij ^s	
Pilesgate—de catallis Roberti clerici de Ettona felonis		xij ^d
Wodecrofte—de catallis Gilberti filii Ranulphi qui infortunio occidit matrem suam		vlij ^d
Helpestona—de catallis Rogeri filii Rogeri Bastard latronis suspensi	liij	vlij ^d

* A prosecution at the instance of next-of-kin. The appellor gave pledges to prosecute the appeal. Appeals of murder and trial by battle were abolished in 1819 by 59 Geo. III., c. 46.

† *Chron. Petrob. temp. Ric. de London, f. 120.*

de catallis Reginaldi le Bracer, latronis suspensi	liij ^d	
de eadem villata, de anno et vasto terrarum ejusdem ...	lijs	
de eadem villata, Johannis Malle lat: susp:.....	li ^s	vi
de eadem villata, Willelmi Noce-man lat ^s : susp:.....	xi ^s	
de eadem villata, de anno et vasto terrarum ipsius, unde Willelmus, de Helpstona fecit fieri cum justiciariis	vi ^s	
Castre—de catallis Thome le rede lat: susp:		vi ^d
de catallis Ricardi Parys clerici, episcopo liberati pro felonia	lxxviii ^s	viii ^d

Forfeits for treason, felony, and felo-de-se were abolished by the Forfeiture Act of 1870, which repealed the enactments which directed a convict for treason to be drawn on a hurdle to the place of execution, to have his head severed from his body, and his body divided into quarters.

In the 13th year of Edward I., the Abbot was summoned to show by what warrant he kept a prison at Burgh. He pleaded that he and his predecessors had enjoyed the privilege time out of mind, and alleged that the King's justices ought to deliver the prisoners. The claim was allowed and confirmed by the King and his Council. The privilege is not without its burdens. It involves the obligation to keep a secure prison and to repair the fabric; and a liability to be fined for the escape of prisoners, no uncommon occurrence. This writ relates to an escape and a claim of sanctuary in the cemetery of the minster:—

Rex constabulare ville de Burgo sci Petri Saltm. Quia datum est nobis intelligi qd Johes Marchaunt, Will Taborer, Joh: Bocher et Ric. Tusinere nuper in gaola nra ville p'dict pro diversis felonis per ipsos ut dicitur ppetratis existentes gaolam nram p'dcam fregerunt et ab eadem gaola usque ad eccliam beati Petri ibm evaserunt imunitatem ecclie p'dote clamando Nos volentes ipsos Johem et Willum Johem et Ricum super comissis suis secundum legem et consuetudinem regni nri anglie nobis precipimus firmiter injungentes qd pro custodio ipor Johis Willi Johis et Ricl in hac parte tam discrete ac salve et secure juxta leges et consuetudines regni nri Anglie ordinatis qd ipsi ab ecclia p'dicta et cimeterio ejusdem quousque iidem Johes Willa. Johes et Ricus. felonias per ipsos ut p'dictum est ppetratis coram coronatoribus nris in Com: Norht. cognoverint et regnum nrum p'dcm abjuraverint in forma juris seu se ad stand legi super comissis suis in hac parte reddere voluerint non evadant ullo modo Teste me ipso, &c.

The King to the Constable of the town of Burgh S. Peter Greeting. Forasmuch as we are given to understand that John

Marchaunt, William Taborer, John Booher and Richard Tusinere lately being in our gaol of the foresaid town on account of divers felonies by them said to have been committed have broken our aforesaid gaol and escaped to the church of blessed Peter there claiming the immunity of the said church. We, desiring to have justice done to the same John, William, John and Richard for their offences according to the law and custom of our Kingdom of England, command you strictly charging that you in this behalf so discreetly and securely take order according to law and custom that they be removed from the church and cemetery until they be taken before our coroners and have abjured the kingdom in form of law or have elected to stand their trials at law for their offences and that they by no means escape.

The sanctuary man under the old law had to confess his felony before the coroner within 40 days of taking refuge, and to take oath of perpetual banishment from the realm. In 1530, branding on the hand and abode in a sanctuary town were substituted for banishment, and the privilege was abolished in 1604.

This calendar of prisoners, delivered from the Liberty gaol in 1425, is taken from the Register of Abbot Gyenge. The Justices put into Commission to deliver the Liberty gaol were then appointed by letters patent. The hearing was in the English tongue, the enrolment of the proceedings in Latin according to an Act of 36 Edw. 3, c. 15, A.D. 1362, which provided "*qe toutes plees qe serront a pleder en nos courtz quiconques soient pledez, montrez, defenduz, responduz, debatuz et juggez en la lange engleize et qils soient entreez et enroullez en latin.*"

Deliberacio Gaole domini Regis de Burgo Sancti Petri [1425].

Dominus Rex mandavit dilectis et fidelibus suis Willielmo Babyngton Thome Wydevyle Willielmo Tresham et Johanni Billyng literas suas patentes in hec verba Henricus Dei gratia Rex Anglie et Francie et Dominus Hibernie dilectis et fidelibus suis Willielmo Babyngton Thome Wydevyle Willielmo Tresham et Johanni Billyng Salutem. Sciatis quod constituimus vos tres et

duos vestrum quorum* vos prefatum Willielmum Babyngton unum esse volumus justiciarios nostros ad gaolam nostram de Burgo Sancti Petri de prisonibus in ea existentibus hac vice deliberandum Et ideo vobis mandamus quod ad certum diem quem vos tres vel duo vestrum quorum vos prefatum Willielmum Babyngton unum esse volumus ad hoc provideritis conveniatis apud Burgum Sancti Petri ad gaolam illam deliberandum facturi inde quod ad justiciam pertinet secundum legem et consuetudinem regni nostri Anglie salvis nobis amerciamentis et aliis ad nos inde spectantibus Mandavimus enim vicecomiti nostro Norhantonensi quod ad certum diem quem vos tres vel duo vestrum quorum vos prefatum Willielmum Babyngton unum esse volumus ei scire facietis omnes prisiones ejusdem gaole et eorum attachiamenta coram eis tribus vel duobus eorum quorum vos prefatum Willielmum Babyngton unum esse volumus ibidem venire faciat. In cujus rei testimonium has literas nostras fieri fecimus patentes. Teste meipso apud Westmonasterium xxiij die Junii anno regni nostri tercio. Virtute quarum literarum patencium domini Regis precatu fuit vicecomes quod venire faceret coram prefatis Willielmo Babyngton et sociis suis suprascriptis apud Burgum Sancti Petri die lune proximo post festum Sancti Michaelis Archangeli proxime futurum omnes prisiones ejusdem Gaole tam probatores quam alios prisiones quoscunque cum eorum indicamentis attachiamentis appellis et omnibus aliis adminiculis dictos prisiones quoquo modo tangentibus. Et de quolibet hundredo comitatus predicti tam infra libertates quam extra xxiiij milites quam alios probos et legales† homines dictos prisiones in illa affinitate attingentes Et de qualibet villata in quibus felonie facte fuerunt quatuor homines et prepositum premunire eciam faciatis custodes pacis domini Regis coronatores Ballivos libertatum Comitatus predicti quod tunc sint ibidem cum eorum indicamentis attachiamentis appellis et omnibus aliis adminiculis dictos prisiones quoquo modo tangentibus Ita quod deliberacio illa ad dictum diem non remanebit faciendum et quod proclamari eciam faciatis per totam ballivam suam tam infra libertates quam extra quod omnes illi qui appella versus hujusmodi prisiones prosequi vellent quod tunc essent ibidem versus eos prospecturi si sibi viderint expediri &c quiquidem vicecomes videlicet.

Wakerley inde fecit execucionem &c

In the translation of these documents the names and descriptions are not repeated every time they occur, as in the originals.

Delivery of the King's Gaol of Peterborough.

Our lord the King directed his letters patent to his beloved and faithful William Babyngton, Thomas Wydevyle, William Tresham and John Billyng, in these words; Henry by the grace of God King of England and France and lord of Ireland to his beloved and faithful &c. greeting: Know ye that we have appointed any three or two of you, of whom we will you the forsaidd Will. Babyngton to be one, our justices to deliver our gaol of Peterborough of prisoners now therein therefore we

* The practice of joining some person learned in the law occasioned the "quorum" clause. Under the Crown Office Act, 1877, the old commissions of the peace were called in, and the clause has since been omitted.

† Legales, i.e., freeman who were law-worthy, having rights which spring from free birth. Villeins were born in bondage.

command you that on a day certain which any three or two of you, of whom you the foresaid Will. Babyngton we will to be one, shall appoint, ye do meet at Peterborough to deliver that gaol and to do therein whatever pertains to justice according to the law and custom of our realm of England, reserving to us fines and other things belonging to us. And we have commanded our sheriff of Northampton that on a day certain which any three &c notify him that he do cause to come all the prisoners of that gaol, together with the cause of their attachments, there before you &c. In witness whereof we have made these our letters patent. Witness myself at Westminster the 22nd day of June in the 3rd year of our reign. By virtue of which letters patent of our lord King the sheriff was asked to bring before the foresaid Will. Babyngton and his fellows above named at Peterborough on the Monday next after the feast of S. Michael the Archangel next coming all the prisoners of the same gaol both approvers and other prisoners whatsoever with their indictments, attachments, appeals, and all other aids in any way touching the said prisoners And from each hundred of the foresaid county, within liberties and without, 24 Knights and other good and law-worthy men who have to do with the said prisoners in that district And four men from each township in which the felonies were committed And that you cause the constable to summon the keepers of the King's peace, coroners, bailiffs of the liberties of the foresaid county, that they be there with the indictments, attachments, appeals and all other aids in any way touching the said prisoners So that the delivery on that day may not leave remanets and to proclaim throughout his bailliwick, both within liberties and without, that all those who wish to prosecute appeals against the said prisoners be there to be confronted with them.

Whereof Wakerley did execution, &c.

Deliberacio gaole domini Regis de Burgo Sancti Petri coram Willielmo Babyngton Thoma Wydevyle et Willielmo Tresham die lune proximo post festum Sancti Michaelis Archangeli Anno regni regis Henrici vi^{ti} post conquestum Hij^{to}.

North. SS.*

Willielmus Smyth de Burgo Sancti Petri in comitatu Norhantonensi carpenter captus pro eo quod ipse indicatus est coram custodibus pacis domini Regis in Comitatu predicto de eo quod in vigilia Translationis Sancti Thome martyris anno regni regis Henrici quinti post conquestum nono apud villam de Burgo Sancti Petri Margaretam uxorem Johannis Brentyngham felonice rapuit venit per Vicecomitem ad barram ductus Et allocutus qualiter se velit de felonis predicta sibi superius imposita acquietare dicit quod ipse in nullo est inde culpabilis Et inde de bono et malo ponit se super patriam Ideo fit inde jurata juratores venientes qui ad veritatem de premissis dicendum electi triati et jurati dicunt super sacramentum suum quod predictus Willielmus in nullo est culpabilis de felonis predicta sibi superius imposita nec unquam ea occasione se retraxit; ideo idem Willielmus est inde quietus. Q^a.

Delivery of the King's gaol of Peterborough done there before Will. Babyngton, Thos. Wydevyle and Will. Tresham on Monday next after the feast of St. Michael the Archangel in the 4th year of the reign of King Henry VI. after the conquest.

Northampton to wit.

William Smyth of Peterborough in the county of Northampton carpenter, in custody for that he is indicted before the keepers of the peace of our Lord the King in the foresaid county for that he on the vigil of the Translation of Saint Thomas the Martyr in the 9th year of King Henry V. at the town of Peterborough feloniously raped Margaret the wife of John Brentyngham came brought to the bar by the sheriff. And being asked how he wished to be tried for the foresaid felony so charged against him, says that he is in no wise guilty and for good and evil puts himself on the country. Therefore a jury is formed to speak to the truth of the premisses who being picked, challenged and sworn say on their oath that the foresaid William is not guilty of the foresaid felony so charged against him nor did he ever by reason thereof withdraw himself therefore let the same William go acquitted.

Acquitted.

* Scilicet.

† The arraignment or accusation. This old form of asking how the prisoner wishes to be tried is disused. It now consists of three parts; 1st, calling the prisoner to the bar by name; secondly, reading the indictment to him; thirdly, asking whether he be guilty or not of the offence charged.

‡ Nec: ret: is the usual contraction found in the gaol books. Flight in criminal cases was itself a crime. An innocent man who fled from a charge of felony forfeited all his goods and chattels. When the jury acquitted the prisoner it was necessary for his protection to have a verdict acquitting him of flight. During the Commonwealth the proceedings were recorded in English; and the formula was, "Not Guilty. No flying."

Norht, SS.

Johannes Dyve de Wermynghon in comitatu Norhantonensi houbondman captus pro eo quod indicatus est coram prefatis custodibus pacis pro eo quod ipse die lune proximo post festum Sancti Valentini Anno regni regis Henrici sexti post conquestum proximo clausum et domos Roberti Ireland de Ashton apud Ashton fregit et unum quarterium ordeï precii duorum solidorum et sex denariorum de bonis et catallis predicti Roberti ibidem inventum felonice furatus est Et quod idem Johannes die anno et loco suprascriptis clausum et domos Thome Eston de Wermynghon apud Wermynghon in comitatu predicto fregit et unum quarterium avenarum precii duorum solidorum ibidem inventum felonice furatus fuit venit per vicecomitem ad barram ductus Et allocutus qualiter se velit de felonis predictis acquiescere dicit quod ipse in nullo est inde culpabilis Et inde de bono et malo ponit se* super patriam Ideo sit inde jurata juratores venientes qui ad veritatem de premissis dicendum electi triati et jurati dicunt super sacramentum suum quod predictus Johannes in nullo est culpabilis de premissis sibi superius impositis nec unquam hiis occasionibus se retraxit ideo idem Johannes eat inde quietus.

Q^a. Q^a.

Northampton to wit.

John Dyve of Warmington in county of Northampton husbandman in custody for that he was indicted before the foresaid keepers of the peace for that he, on the Monday next after the feast of S. Valentine in the 1st year of the reign of King Henry the Sixth after the conquest, broke into the stable and dwelling house of Robert Ireland of Ashton at Ashton and feloniously stole one quarter of barley, of the value of two shillings and six pence, of the goods and chattels there found of the said Robert, And for that the same John the day and year above written broke into the stable and dwelling house of Thomas Eston of Warmington at Warmington and feloniously stole one quarter of oats, of the value of two shillings, there found. Being brought to the bar &c. &c. (As before in last record. The prisoner was acquitted on both charges.)

Willielmus Salum de Armeston in comitatu Norhantonensi cursour† captus est pro eo quod indicatus est coram prefatis custodibus pacis de eo quod ipse die Jovis in vigilia Sancti Michaelis anno regni regis Henrici sexti post conquestum secundo clausum et domos Johannis Wakerley armigeri apud Oundell in comitatu predicto fregit et de bonis et catallis ejusdem Johannis precii sexaginta solidorum ibidem felonice furatus fuit Et quod idem Willielmus die anno et loco supradictis unum

* Po; se: is the usual contraction, i.e., he elects to be tried by a jury of his countrymen.

† Probably the running post. "Coursing officers" occur in old acts: and "Coursing snatchers" in King Henry V., 1. 2.

equum precii tredecim solidorum et quatuor denariorum de bonis et catallis Willielmi Hilde de Stoke Doyley felonice furatus fuit venit per vicecomitem ad barram ductus Et allocutus qualiter se velit de felonis predictis acquietare dicit quod ipse in nullo est inde culpabilis* Et inde de bono et malo ponit se super patriam. Ideo fit inde jurata Juratores venientes qui ad veritatem de premissis dicendum electi triati et jurati dicunt super sacramentum suum quod predictus Willielmus Salum culpabilis est de premissis sibi supra impositis catalla ipsius Willielmi nulla† Ideo idem Willielmus suspendatur. 8^a

William Salum of Armeston in the county of Northampton runner in custody for that he is indicted before the foresaid Keepers of the peace for that he on Thursday the vigil of S. Michael in the 2nd year of the reign of K. Henry the 6th after the conquest broke into the stable and dwelling house of John Wakerley esquire at Oundle in said county and feloniously stole three horses of the goods and chattels of the said John of the value of sixty shillings, And for that the same William the day and year abovesaid feloniously stole a horse of the value of thirteen shillings and four pence of the goods and chattels of William Hilde of Stoke Doyley, brought to the bar by the sheriff and asked whether he wished to be acquitted of the said felonies says that he is not guilty and for good and evil puts himself on the country And a jury being summoned the jurors being picked challenged and sworn to find the truth about the premisses say on their oath that the said William Salum is guilty of the offences charged against him and that he has no goods therefore let the same William be hanged.

Hanged.

Norht. SS.

Galfridus Fox nuper de Burgo Sancti Petri in comitatu Norhantonensi tallour et Johannes Broder de eadem in comitatu predicto glover capti pro eo quod indicati sunt coram prefatis custodibus pacis quod ipsi simul cum aliis die Jovis proximo post festum Inventionis Sancte Crucis anno regni regis Henrici sexti post conquestum tercio Johannem Sawtry fratrem ordinis Augustinentis de Huntynodon de sexdecim solidis et octo denariis de bonis Priorie ejusdem ordinis de Huntynodon in custodia ejusdem fratris existentibus apud villam de Burgo Sancti Petri felonice depredati fuerunt venerunt per vicecomitem ad barram ducti

* Cul: the abbreviation for culpabilis, with prit. or priat, occurs in gaol books, to signify the readiness of the Clerk of the Crown to go to trial on the prisoner's plea: hence the word culprit. It occurs in the trial of the Earl of Pembroke for murder in 1678. "Clerk of Crown.—How say you—are you guilty or not guilty? Prisoner.—Not guilty. C. of C.—Culprit, how will you be tried? P.—By my peers."

† Cat: nul: goods of freemen were forfeit.

Et allocuti qualiter se velint de feloniam predicta acquiescere dicunt separatim quod ipsi in nullo sunt inde culpabiles et inde de bono et malo ponunt se super patriam Ideo fiat inde jurata Juratores veniant qui ad veritatem de infra contentis dicendum electi triati et jurati dicunt super sacramentum suum quod predicti Galfridus et Johannes Broder culpabiles sunt de feloniam predicta sibi superius imposita Ideo iidem Galfridus et Johannes Broder suspendantur. S^a. S^a.

Northampton to wit.

Geoffrey Fox, lately of Peterborough in the county of Northampton, tailor, and John Broder, of the same in the county aforesaid, in custody for that they are indicted before the foresaid keepers of the peace for that they with others on Thursday next after the feast of the Invention of the Holy Cross, in the third year of the reign of King Henry the 6th after the conquest, feloniously robbed, in the town of Peterborough, John Sawtry, a brother of the Augustinian Order of Huntingdon, of sixteen shillings and eight pence belonging to the Prior of the same Order of Huntingdon, and being in the keeping of the same brother, came, brought by the sheriff to the bar, and being asked how they wish to quit themselves of the said felony, severally say that they are not guilty, and for good and evil put themselves on their country. Therefore let a jury be summoned. The jurors being chosen, challenged, and sworn to speak to the truth of the within contained matters say upon their oath that the aforesaid Geoffrey and John Broder are guilty of the aforesaid felony above charged against them. Therefore let the same Geoffrey and John Broder be hanged.

Hanged. Hanged.

Norht. SS.

Johannes Couper de Pokebroke in comitatu Norhantonensi housbondman captus pro eo quod indicatus est coram prefatis custodibus pacis quod ipse die Martis proximo post festum Sancti Dionisii Anno regni regis Henrici sexti post conquestum secundo viginti et quatuor oves precii quadraginta solidorum de bonis et catallis Johannis Beatriche et Johannis Best de Pokebroke apud Pokebrok felonice furatus fuit venit per vicecomitem ad barram ductus Et allocutus qualiter se velint de feloniam predicta acquiescere dicit quod ipse in nullo est inde culpabilis et inde de bono et malo ponit se super patriam Ideo fiat inde jurata Juratores veniant qui ad veritatem inde dicendum electi triati et jurati dicunt super sacramentum suum quod predictus Johannes Couper culpabilis est de feloniam predicta sibi superius imposita Ideo idem Johannes suspendatur. S^a.

John Couper, of Polebrook in the county of Northampton, husbandman, in custody being charged before the aforesaid

Keepers of the Peace for that he on Tuesday next after the feast of S. Deny's, in the second year of the reign of K. Henry the 6th after the conquest, at Polebrook feloniously stole twenty-four sheep of the value of forty shillings of the goods and chattels of John Bestriche and John Best of Polebrook, being brought to the bar, &c., and asked, &c. (He pleaded not guilty, and put himself on his country. Being found guilty he was sentenced to be hanged.) Hanged.

Norht. SS.

Thomas Alderkyrke de Peykirke in comitatu Norhantonensi husbandman captus pro eo quod indicatus est coram prefatis custodibus pacis de eo quod ipse die lune proximo ante festum Purificationis Beate Marie Virginis anno regni regis Henrici sexti post conquestum primo unum boviculum precii octo solidorum de bonis et catallis Radulphi Campyon de Glynton apud Glynton predictam felonice furatus fuit venit per vicecomitem ad barram ductus Et allocutus qualiter se velit de feloniam predicta acquiescere dicit quod ipse in nullo est inde culpabilis et inde de bono et malo ponit se super patriam Ideo fiat inde jurata Juratores veniunt qui ad veritatem inde dicendum electi triati et jurati dicunt super sacramentum suum quod predictus Thomas culpabilis est de feloniam predicta sibi superius imposita catalla ipsius Thome nulla Ideo idem Thomas suspendatur. S.

(In this entry Thomas Alderkyrke, of Peakirk, co. Northants. husbandman, was charged with having, on Monday, before the feast of the Purification of the Blessed Virgin Mary, in the first year of Henry VI's reign, stolen at Glington one young steer, of the value of eight shillings, of the goods of Ralph Campyon, of Glington. He was found guilty and sentenced to death. He had no chattels.)

Norht. SS.

Thomas Grysley alias dictus Thomas Mauseley nuper manens in Wodecroft in comitatu Norhantonensi laborer captus pro eo quod indicatus est coram Thoma Wydevyle senescallo libertatis Abbatis de Burgo Sancti Petri de eo quod ipse in festo Nativitatis Beate Marie Virginis Anno regni regis Henrici sexti secundo unum equum precii trium solidorum et quatuor denariorum apud Helpeton de bonis Roberti Strete felonice furatus fuit Et quod idem Thomas die Jovis in festo Exaltacionis Sancte Crucis anno regni regis Henrici sexti post conquestum tercio unam togam unum archum et alia bona et catalla ad valenciam viginti solidorum de bonis Johannis Milner apud Loleham felonice furatus fuit venit per vicecomitem ad barram ductus Et allocutus qualiter se velit de feloniam predictis acquiescere dicit quod ipse in nullo est culpabilis et inde de bono et malo ponit se super patriam Ideo fiat inde jurata Juratores veniunt qui ad veritatem inde dicendum electi triati et jurati dicunt super sacramentum suum quod predictus Thomas culpabilis est de feloniam predictis sibi superius impositis catalla ipsius Thome nulla Ideo idem Thomas suspendatur. S.

(Thomas Grysaley, alias Mauseley, lately sojourning in Woodcroft,* labourer, was charged before Thomas Wydeville, Steward of the liberty of the Abbot of Peterborough, with having stolen at Helpston, on the feast of the birth of the Blessed Virgin Mary, 2 Hen. VI, a horse worth 3s. 4d., belonging to Robert Strete; also with having stolen at Lolham,† on Thursday in the feast of the Exaltation of the Holy Cross, 3 Hen. VI, a coat, a bow, and other goods worth 20s., belonging to John Milner. Found guilty and hanged. No chattels.)

Norht. SS.

Willielmus Denby de Glapthorne in comitatu Norhantonensi laborer captus pro eo quod indicatus est coram prefatis custodibus pacis de eo quod ipse die lune proximo ante festum Omnium Sanctorum anno regni regis Henrici nuper regis Anglie patris domini Regis nunc quinto apud Geyttington quadraginta oves precii quadraginta solidorum de bonis et catallis Willielmi Hay clerici ibidem inventas felonice furatus fuit venit per vicecomitem ad barram ductus Et allocutus qualiter se velit de feloniam predicta acquietare dicit quod ipse in nullo est inde culpabilis et inde de bono et malo ponit se super patriam Ideo fiat inde jurata Juratores veniunt qui ad veritatem inde dicendum electi jurati et triati dicunt super sacramentum suum quod predictus Willielmus Denby in nullo est culpabilis de feloniam sibi superius imposita nec ea occasione unquam se retraxit Ideo idem Willielmus eat inde quietus. Q^a.

(William Denby, of Glapthorne, co. Northants, labourer, was charged with having stolen, on Monday before All Saints' Day, in the 5th year of the reign of the late King Henry father of the present King, 40 sheep worth 40s., belonging to William Hay, Clerk, of Geyttington.‡ He was acquitted; and it was found that he had not tried to escape.)

Norht. SS.

Thomas nuper serviens Johannis Sprukburgh de Burgo Sancti Petri in comitatu Norhantonensi servaunt captus pro eo quod indicatus est coram prefatis custodibus pacis de eo quod ipse die lune proximo post festum corporis Christi Anno Regni regis Henrici sexti post conquestum tercio sexdecim solidos de bonis et catallis Johannis Sprukburgh apud Purgh predictam felonice furatus fuit venit per vicecomitem ad barram ductus Et allocutus qualiter se velit de feloniam predicta acquietare dicit quod ipse in nullo est culpabilis et inde de bono et malo ponit se super patriam Ideo fiat inde jurata Juratores veniunt qui ad veritatem de infra contentis dicendum electi triati et jurati dicunt super sacramentum suum quod predictus Thomas in nullo est culpabilis de feloniam predicta sibi superius imposita nec ea occasione unquam se retraxit Ideo idem Thomas eat inde quietus. Q^a.

* In parish of Etton, co. Northants.

† In parish of Maxey, co. Northants.

‡ Perhaps Geddington.

(Thomas, lately in service of John Sprukburg, of Peterborough, was charged with having stolen 16s. of his master's money on Monday after the feast of Corpus Christi, 3 Hen. VI. He was acquitted, and had not tried to escape.)

Norht. SS.

Thomas Warde de Artlyngburgh in comitatu Norhantonensi Gentilman captus pro eo quod indicatus est coram Willielmo Aldewynclie uno coronatorum domini Regis in comitatu Norhantonensi de eo quod ipse vicesimo die Julii anno regni regis Henrici quinti post conquestum decimo Johannem Cok apud Irtlyngburgh felonice interfecit venit per vicecomitem ad barram ductus Et allocutus qualiter se velit de feloniam predictam acquietare dicit quod ipse in nullo est inde culpabilis et inde de bono et malo ponit se super patriam Ideo fiat inde jurata juratores veniunt qui ad veritatem inde dicendum electi triati et jurati dicunt super sacramentum suum quod predictus Thomas in nullo est culpabilis de feloniam predictam nec ea occasione unquam se retraxit iidemque juratores ulterius perquisiti quis predictum Johannem interfecit dicunt super sacramentum suum quod quidam Gervasius Rudd de Manchestre in comitatu Lancastrensi ipsum Johannem interfecit Ideo predictus Thomas eat inde quietus.

Q^a.

Thomas Warde, of Irthlingborough in the county of Northampton, gentleman, in custody for that he was charged before William Aldwinkle one of the King's coroners for the county of Northampton for that he on the 20th day of July in the 10th year of the reign of King Henry the fifth after the conquest feloniously killed John Cok at Irthlingborough, came to the bar brought by the Sheriff, and being asked how he wished to quit himself of the aforesaid felony says that he is in no wise guilty, and for good and evil puts himself on his country. Wherefore let a jury be summoned. The jurors came, and being chosen, challenged, and sworn to speak to the truth of the matter say upon their oath that the aforesaid Thomas is in no wise guilty of the felony aforesaid, nor did he ever withdraw himself on the occasion. And the same jurors being further asked who did kill the aforesaid John, say upon their oath that one Gervase Rudde, of Manchester, in the county of Lancaster, killed the said John.* Wherefore let the aforesaid Thomas go acquitted. Acquitted.

* Where the indictment was preferred by the grand inquest the jury acquitted and said no more, only inquiring of the flight: but if the prisoner was arraigned on the coroner's inquisition and acquitted, the jury also found who it was that killed the deceased, and their finding served as an indictment against such person.

Norht. SS.

Willielmus Blogwyn de Armeston in comitatu Norhantonensi laborer Robertus Snell de Fulmere in comitatu Cantabrigiensi laborer Johannes Berde de Castre in comitatu Norhantonensi turnour Robertus Fisher de Marham in comitatu Norhantonensi Robertus Brantyngham de Burgh in comitatu Norhantonensi barker Johannes Forest nuper de Wermynghon in comitatu Norhantonensi taillour Willielmus Trampell de Estfeld in comitatu Norhantonensi laborer Willielmus Braban de Castre in eodem comitatu webster Johannes Merssh de Etton in eodem comitatu laborer Simon Kyng de Norwych in comitatu Norfolcensi laborer Henricus Hopkyn de Thorp in comitatu Norhantonensi laborer Johannes Blome nuper manens in Yakesley in comitatu Huntingdonensi laborer Willielmus Bluntesham de Peykirke in comitatu Norhantonensi laborer Henricus Grey de Hemyngton in eodem comitatu laborer et Johannes Smythfeld de Burgh in comitatu predicto sawyer vi capti per suspeccionem latrocinii secundum statutum Wynton venerunt per vicecomitem ad barram ducti et nullum de eis habetur indicamentum Et iusticiarii pacis de eis inquisierunt et nichil mali de eis invenerunt Et testatum est hic quod sunt bone fame Et super hoc proclamatio pro domino Rege facta este quod si aliquis sit qui versus eos vel eorum aliquem prosequi voluerunt veniat et audietur Et nullus venit Ideo iidem Willielmus Robertus Johannes Robertus Robertus Johannes Willielmus Willielmus Johannes Simon Henricus Johannes Willielmus Henricus et Johannes delibentur &c. Delibentur.

(William Blogwin, of Armston, co. Northants, labourer, Robert Snell, of Fulmire, co. Camb., labourer, John Bird, of Castor, turner, Robert Fisher, of Marholm, Robert Brantingham, of Burgh, barker, John Forest, lately of Warmington, tailor, William Trampell, of Eastfield, labourer, William Braban, of Castor, webster, John Marsh, of Etton, labourer, (all these in co. Northants,) Simon King, of Norwich, labourer, Henry Hopkin, of Thorpe, co. Northants, labourer, John Blome, lately of Yaxley, co. Hunt., labourer, William Bluntesham, of Peakirk, labourer, Henry Grey, of Hemington, labourer, and John Smithfield, of Burgh, sawyer, (these three in co. Northants.) were arrested on suspicion of highway robbery pursuant to the statute of Winton: when brought to the bar no indictment was presented, nor, upon due enquiry, was anything found against them, and it was proved that they were of good repute. Proclamation was hereupon made on behalf of the King for any person who could bring a charge against them or any of them to come forward and he should be heard. As no one came all were discharged.)

Norht. SS.

Johannes Merssh de Peterburgh in comitatu predicto milner captus fuit apud Burgh pro suspeccone felonie per constabularium et villatum

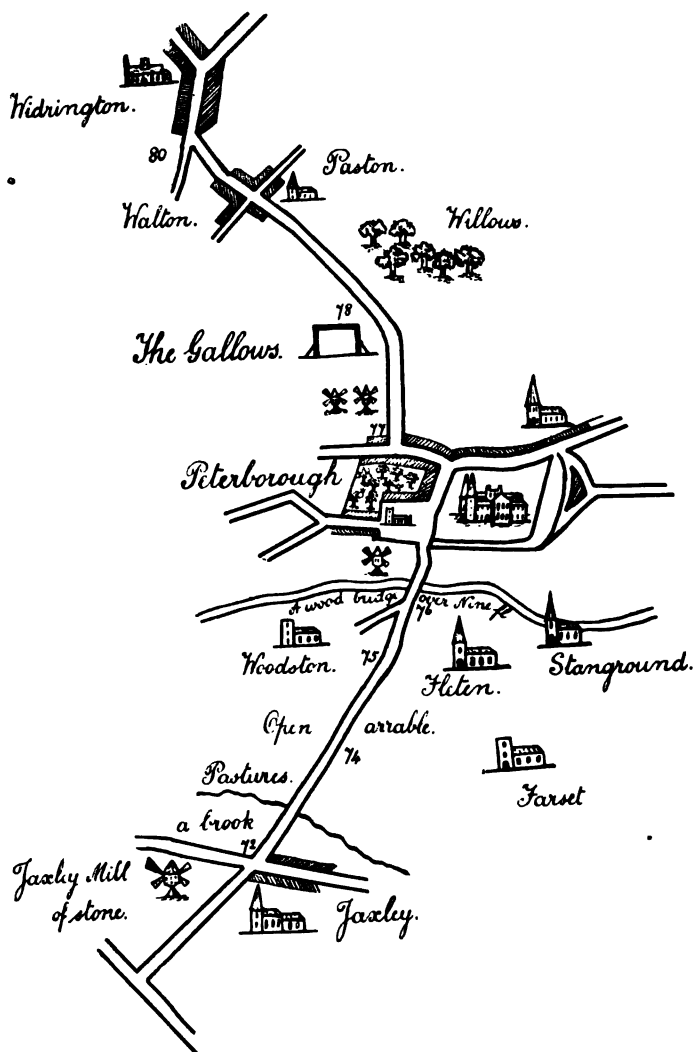
ibidem et ad gaolam predictam per eodem in custodiam Johannis Soot custodis gaole predictae missus fuit prout per Kalendarium &c Justiciariorum hic constat de recordo qui quidem Johannes Mersah solemniter exactus non comparuit Ideo de eodem Johanne Soot pro evasione ejusdem predicti Johannis Mersah &c. &c.

John Marsh, of Peterborough in the aforesaid county, miller, was taken at Peterborough on suspicion of felony by the constable and bailiff there, and by them committed to the gaol aforesaid into the custody of John Soot the keeper of the gaol, as appears by record according to the Kalendar of the Justices Which John Marsh, being solemnly cited, failed to appear. Wherefore as to the same John Soot, for the escape of the same aforesaid John Marsh, &c., &c.

The Liberty Justices retain their power to nominate from their number justices to deliver the gaol: but they can, pursuant to an enabling Act passed to relieve local jurisdictions, commit any person charged with a capital offence to the gaol of the County of Northampton, to be tried at the next session of Oyer and Terminer or General Gaol Delivery. This enabling Act was brought into Parliament by Sir J. Scarlett (afterwards Lord Abinger) in 1820. He was member for Peterborough. The title of the Act (60 Geo. III. and 1 Geo. IV. cap. 14) is: "An Act to remedy certain inconveniences in local and exclusive jurisdictions."* If the Chairman of the Liberty Justices was in holy orders, he could not preside at a trial where life was in jeopardy, by reason of the rule "Ecclesia non novit sanguinem." This is said to have been the occasion of the Act.

In the 17th century the gallows stood on the west side of the Lincoln Road, between the Long Pond and Millfield. They are indicated in Ogilby's *Britannia Magna*, 1675; and on all subsequent road maps of England. In the 19th century the gallows stood near Fengate, by the side of the North Bank.

* The recital of the Act is incorrect. The justices of the peace of the Liberty do not try capital crimes. They are empowered by the Charter of Henry VII. to nominate three or four of their number to be justices of gaol delivery, and the King's commissions invest such justices with all powers of the King's Justices of Oyer and Terminer and Gaol Delivery.

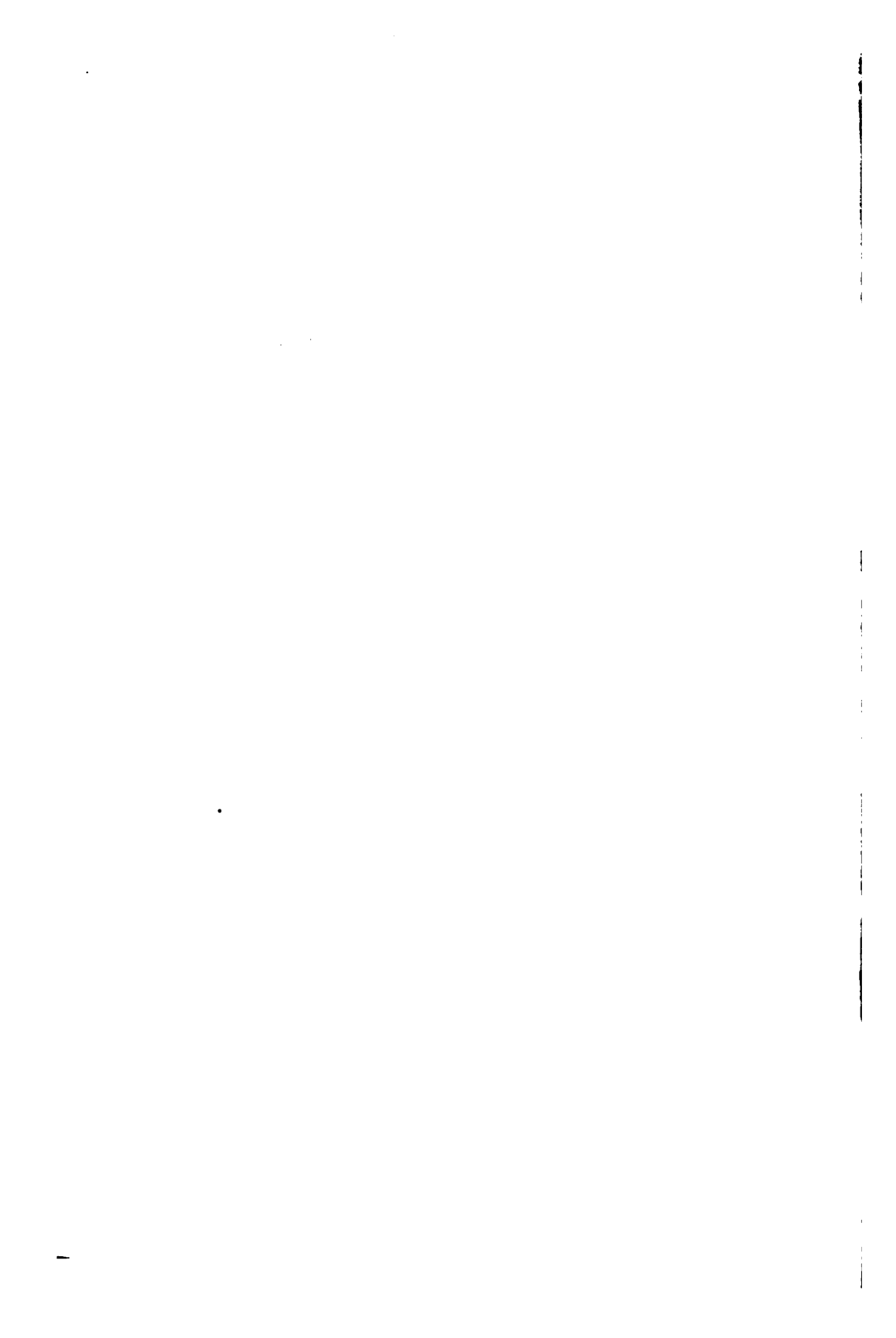


John Ogilby's Britannia 1675.

Geo. C. Caster, Peterborough.

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ENLARGED SKETCH, FROM A MAP DATED 1675, TO SHEW POSITION
OF THE OLD GALLOWES AT PETERBOROUGH.



CHAPTER II.

Quo Warranto. Ouster of the Sheriff. Murderers at Oundle. A Gaol Delivery, A.D. 1408. The Nomination of Justices of Gaol Delivery, A.D. 1440. A Writ of Habeas Corpus. King Henry VII. Charter, A.D. 1492. Inspevimus.

Long before the grant of the charters which empowered the Abbot to put in commission justices to deliver the Liberty gaol, this exclusive jurisdiction had been recognised. In the first year of King Edward I., he was summoned to appear before the Justices in Eyre to show *quo warranto* he claimed the franchise of his Eight Hundreds*—to administer justice there, to have the goods of condemned felons, with other *jura coronæ*. And he came up with a bundle of royal charters, that of King Edgar with a "*nec rex*" clause, and that of Richard of the lion-heart, which confirmed the grant of the Saxon King and grants of his Norman predecessors. The King's Attorney took exception to the Saxon charters and their jangling noise of barbarous words, infangthiefe and outfangthiefe, flem and flete. "Is this good French? Do monks gain by conquest?" This weighty argument must have surprised the Abbot's attorney, and the Court graciously interceded, asking if the Abbot would pay fine to the King and take a confirmation at his royal pleasure, or would he pray for the judgment of the Court. The Abbot would submit to a fine. This was a good settlement for the Convent, whose Saxon charters and others earlier than the reign of Richard I. were not pleadable without proof of allowance, and the King would

* The Abbot of Bury St. Edmund enjoyed a similar liberty within 8 hundreds and a half, which were bestowed on the monastery by the Confessor "as fully as my mother Emma had the same." The Conqueror confirmed that charter, and there was always a gaol delivery separate from the County Commission.

surely be aiding to his charter and protect the franchise from encroachment. An instance occurred in the 13th year of Edw. I., when one Fauvel and others were purgued for causing the death of Wolnot Kempston within the Liberty, and the Sheriff of the County of Northampton was proceeding to proclaim their outlawry,* the King sent a writ forbidding him to continue the process because of the Abbot's franchise to imprison all offenders taken within the Liberty, and a writ to the Justices in Eyre to allow all the liberties used as heretofore.

Quia Abbas tenet octo hundreda sua et habet in predictis retorna brevium domini Regis et quicquid vicecomes habet in dominicis hundredis domini Regis.†

But neither bell, book, nor candle would stop the Sheriff. To lift up the rotten privilege of sanctuary and custom against rights inherent to his office throughout eight hundreds of the twenty in the shire, to gorge the purse of a hoarding Abbot, was hateful! So in spite of the words‡ in Edward I.'s charter "*ne vicecomes se intromittat*," which ousted the Sheriff, he resolved to give the proud churchman a "turn." Were not forfeitures, fines and amerciament, goods and chattels of felons,§ filched from his shrievedom? Little cared the Abbot about *jura coronas*. Gaol fees too went to the Abbot's gaoler, just as covetous as the Sheriff. In A.D. 1275, a grand jury made a presentment that "Robert, a clerk, bailiff of Burgh had arrested Adam Joye and others more and from time to time

* A criminal at large, after proclamation, was outlawed and became civiliter mortuus, all his property being forfeit. Process of outlawry in civil proceedings was not abolished till 1879, by the Civil Procedure Act.

† Return of writs: but if a writ has a "*non omittas*" clause, the Sheriff executes within a liberty without sending his mandate to the bailiff of the lord. When the Crown is a party the writ is always a "*non omittas*" in law. In 30 Edw. I., the Sheriff of N. accounted for fines at the Eyre of John de Vallibus £30 6s. 8d. from the Liberty, deducting 20s. for a concealment of Henry Tallifer by the town of Thornhawe, and half a mark fine of Tallifer for selling wine in false measure; thus to the Abbot £19 3s. 4d. Reg. Godfrey, f. 90. A concealment, i.e., neglect to inform the sheriff's officers of the commission of a felony, there being no actual assistance proved as in the case of accessory after fact or privity before the fact.

‡ Hundred Rolls. 7 E. 1, m. 31d.

§ Amerciament. Sit in misericordia, i.e., liable to be amerced by a jury. Magna Charta enacts that no man is to be amerced but by the oath of good and law-worthy men of his vicine. Waiver is where a felon flies, and for fear of apprehension waives the stolen goods. Forfeiture to the Crown is owing to the default to make hot pursuit. By the Forfeiture Act, 1870, convictions for treason or felony, or *felo-de-se*, are not to cause forfeitures, except in case of outlawry. The Charters of 36 Henry VI., Pat. 2, m. 3, and of 2 Edw. IV. Pat. 1, m. 10, contain a like non intromittat clause. These charters granted to the Abbot and Convent jurisdiction to try "*pleas*" prosecuted in the vill of Burgh. This jurisdiction is still exercised by the Dean and Chapter in their Court of Common Pleas.

imprisoned them without justification unless indeed that Richard, brother of s^d. Robert, was gaoler and retained the upper garment of the prisoners or a fee of fourpence."*

The defeat of the Sheriff in A.D. 1275 might admonish him to keep his hands off the Nesse of Burgh, but to have his jurisdiction assailed and fees diminished at Kettering and elsewhere in the middle of the County was not to be endured. In A.D. 1408, he assailed the Liberty jurisdiction anew; and his failure to oust the Abbot's officers established the privileges of the Convent throughout the Eight Hundreds. Thrice to arm his just quarrel the Abbot obtained the King's writ commanding the Sheriff not to indulge in the like indiscretion. The writ recites the facts in the subjoined record contained, and proceeds:—†

Tu tamen prefatos Abbatem et Conv: quominus ipsi prisonam sive gaolam hujusdem ac execucioem prisonum et felonum infra eadem octo hundreda inventorum habere et exercere possint ut deberent multipliciter inquietas et perturbas jam de novo ac quosdam homines infra hundreda illa occasione cujusdam felonie per ipsos ut pretenditur arrestari fecisti et securitatem ab eisdem hominibus ad eadem gaolam nre Com. p'dci extra hundreda p'dca quicunque inde requisiti fuerint reddend cepisti in ipor Abbatis et Conventus dampnum non modicum et gravamen unde nobis supplicarunt sibi per nos de remedio provideri Tibi precepimus qd si ita est tunc ipsos Abbatem et Conv^m prisonam sive gaolam illam ac plenariam execucioem prisonum et felonum infra hundreda p'dca inventorem libere et quiete habere et exercere permittas.

An ample memorandum of the proceedings of the Sheriff, which occasioned the King's mandate, is entered in the register of the Monastery kept during the Abbacy of William Gyenge:—

Delibatio certor: tenent: dni Abbatis indicator de mordre apud Oundill facta per obtent: ministri dni Abb: iudicio justio: delibat.

M^d q^d xvi^o die Januar anno r. r. Hen^r. iiij^o ix^o Dns la Zouche de Haringworth et soc sui justiciarii dni Regis de pace in Com Norht habuerunt quamdam sessionem de pace apud Oundill et ibidem oepere indicamentum quorumdam Phi Skynner Matild Lawe et Joh fil ejusdem Matild tenencium

* Gaol fees and gratuities payable at gaols or bridewells from prisoners were abolished by 56 Geo. III., c. 50. Formerly a bar-fee of 20d. was payable to a gaoler by a prisoner acquitted of felony. If he took more it was an extortion: but in a case of 21 Hy. VII., it was resolved that it was not so, because by the verdict of acquittal he was no longer a prisoner, and therefore his remedy against the sheriff who "priet son toge e argent extra son burse" was by action of trespass for damages. By a verdict of guilty this perquisite belonged to the hangman. Coriolanus scorns the rusty million who wore "doublets that the hangman would bury with those that wore them." I. 4. And Sir John Falstaff, who wanted the office of a master of requests, was consoled with a promise of that of hangman "for obtaining of suits, whereof he hath no lean wardrobe." Hy. IV., I. 2.

† Reg. Gyenge, f. 54.

dni Abbatis de Burgo in eadem villa de Oundill causa interfeccis et mordre cujusdam Rob: Hamond nuper viri doe Matilde Et super hoc dicti justiciarii scripserunt vic: Norht. cujus subvic: ibidem interfuit et recepit warrantum pro eisdem arrestand et non obstante qd quidam ministri et servientes dei dni Abbatis calumpniavere causa libertatis dni Abbatis warrantum pdcm et corpora indicator ducend: ad gaolam dni Regis de Burgo prout libertas exigit et lex requirit, prefatus subvic cum alio ministro ipius vic prefatos indicatos abduxerunt extra dictam libertatem ad gaolam Norht in lesione libertatis predicta et de eisdem indicatis ibidem ceperunt graves extores manuapciones Et postea Dns Abbas sano consilio suo super hoc bond: habito perquisit certa ira Vic Norht direct pro prisonibus pdict ad gaolam libertat p'dice restituend vidit primum alias et pluries tamen pluries non fuit liberatum quia ad delibacoem gaole Norht prox sequ media tempore contingent. Dns Will Thirnyng Capitalis justiciar de Banco et Rob. Tirwynt s'jant in lege, Justic delibacois p'dice p'cepere vic p'dco prefatos indicatos liberari ballis et ministris dei Abb. sic dicentes in plena curia se nolle eos ibm delibare propter conscienciam suam de lesione p'dca Et sic ministri dicti Vic: reduxerunt prefatos indicatos usque Oundill et ibidem eos libavere Johanne Durant seneschal libertatis predicta pro indentur. Et eodem modo ad delibacoem Norht. predict remissi fuerunt et deliberati ad ministrum domini Abbatis Will: Sherman et Agnet uxor sua de Ketryng virtute libertatis predicta ex p'cepto dictor Justiciar.

The delivery from the jurisdiction of the Justices, at the instance of the lord Abbot's officer, of certain of his tenants indicted for murder at Oundle.

Be it remembered that on the 16th day of January, in the 9th year of the reign of King Henry the fourth the lord la Zouche of Harringworth and other justices of the King's peace for the County of Northampton held a session of the peace at Oundle and there took cognizance of the accusation* of Phillip Skynner Matilda Lawe and John the son of Matilda tenants of the lord Abbot of Burgh in the town of Oundle for the killing and murder of Robert Hamond husband of the said Matilda. Whereupon the said justices in writing notified the sheriff of Northamptonshire whose officer was there present and received the warrant to arrest them and notwithstanding that the officers and servants of the lord Abbot protested that the warrant was illegal on account of the liberty of the lord Abbot and that the bodies of the accused ought to be taken to the gaol of the King at Burgh by virtue of the franchise and conformably to law, the foresaid under-sheriff with the officers of

* An indictment is written on parchment and submitted to the grand jurors to be enquired of; a presentment is made at the instance of the jurors to the Court without any indictment before them, and the matter of it is afterwards reduced to a formal indictment.

the sheriff withdrew the accused out of the said franchise to the gaol of Northamptonshire in breach of the foresaid liberty and took from them heavy bail fees. And afterwards the lord Abbot after discreet deliberation having given his bond and sued out a writ directed to the Sheriff of Northamptonshire for the restoration of the prisoners to the gaol of the liberty to wit the original writ, and alias and pluries* but the pluries was not served because in the middle of the term next ensuing Sir Will. Thirning Chief Justice of the Bench and Robert Tirwynt sergeant-at-law Justices assigned for the delivery foresaid gaol commanded the foresaid sheriff to liberate the accused to the bailiffs and officers of the said Abbot thus saying in full court that they were in no wise willing to deliver them from the gaol there by reason of their knowledge of the foresaid breach. Whereupon the officer of the said sheriff brought back the foresaid accused to Oundle and there pursuant to indenture transferred them to John Durant steward of the foresaid liberty. And in the same manner at the delivery of County gaol William Sherman and Agnes his wife of Kettering were remitted and transferred to the officer of the lord Abbot pursuant to the precept of the said Justices by reason of the foresaid franchise.

There could be no excuse for his attack upon a franchise which had been vindicated by quo-warranto proceedings, by long usage, and by a dozen royal confirmations of the Liberty charters.

The prisoners restored to the Abbot's jurisdiction were tried at the Liberty Gaol delivery at Michaelmas, 9 Henry IV., A.D. 1408. The result is recorded thus:—†

* These supplementary writs were issued to meet delays and false returns of gaolers.

† Reg. Deeping f. 113. The enrolment of the record is in Latin, pursuant to the Act of 36 Edw. III., c. 15, A.D. 1362. Before that Act passed Norman French was the language of the Courts. Po: se: is the contraction for *poñit se super patriam*, i.e., demands to be tried by a jury of his countrymen, and that was the hundred in which he dwelt, until the County Juries Act. 1825, extended the panel to the county at large. Qa., *quietus*, i.e., acquitted. *Nec ret., nec retraxit*, i.e., he did not withdraw from pursuit of justice; the flight to avoid arrest being a crime. The origin of "culprit" derives rather from the Norman French than from Latin. The Officer of the Court formerly took the plea of the prisoner in Norman French, and in response to a plea of not guilty, replied *Qu'il parroit*, i.e., let it appear if thou art not guilty. The Latin entry is found in this form, *Culpabilis es. paratus sum verificare*. This word soon came into common use. Archbp. Sancroft, in 1688, before the King and Council begins his defence. "Sir, I stand here a culprit,"

Po: se: Qs. nec ret.

Philippus Skynner de Oundell in dicta Gaole existens eo quod ipse indicatus est coram prefatis custodibus pacis eo quod ipse simul cum aliis ignotis die Jovis in festo apostolorum Simonis et Jude anno regni regis Henrici iij^{ti} post conquestum octavo Robertum Hamond de Oundell apud Oundell in quodam loco vocato Pekkesle felonice interfecit et murderavit.

Puts himself on the Country. Not Guilty. Nor did he fly from justice.

Philipp Skinner of Oundle in the said gaol because he was indicted before the said keepers of the peace for that he with others unknown on Thursday in the feast of the Apostles Simon and Jude in the 8th year of the reign of Henry the fourth of that name after the conquest feloniously slew and murdered Robert Hamond of Oundle at Oundle in a place called Pekkesley.

Po: se: Delibata quia principal delib^r. Delib^r ut supra.

Matilda que fuit uxor predicti Roberti Hamond et Johannes Lawe filius ejusdem Matilde in dicta gaola existentes eo quod ipsi indicati sunt coram prefatis custodibus pacis eo quod ipsi die veneris proximo post festum apostolorum Simonis et Jude anno regni regis Henrici iij^{ti} post conquestum octavo predictum Philippum Skynner apud Oundell felonice receptaverunt scientes ipsum Philippum esse felo domini Regis et fecisse feloniam et murderum predictum Et de eo quod prefati Matilda et Johannes Lawe fuerunt conscientes cum prefato Philippo die et anno supradictis ad feloniam et murderum predictum faciendum.

Put themselves on the Country. Discharged because the principal was discharged. Discharged for same cause.

Matilda who was wife of the said Robert Hamond and John Lawe her son being in the said gaol because they were indicted before the said keepers of the peace for that they on Friday next after the feast of the apostles Simon and Jude in the 8th year of King Henry IVth of that name after the conquest feloniously harboured the said Philip Skinner knowing that he the said Philip was a felon of the King and had committed the foresaid felony and murder. And for that the said Matilda and John Lawe were privy with the said Philip on the day and year aforesaid to the committing of the foresaid felony and murder.

The discharge of accessories to a crime necessarily follows the acquittal of the principal offender: but the accessories

might have been afterwards indicted as principals. Formerly an accessory could not be tried till after the conviction of the principal: but that rule was changed by 24 and 25 Vict., c. 94, "The Accessories and Abettors Act, 1861."

In 1440,* King Henry VI. granted a charter to the Abbot and Convent, enabling them to nominate justices to deliver the Liberty gaol with the same powers as the King's justices had for the delivery of the County gaol, with a proviso that one of the justices so assigned should be one of the quorum of the justices of the peace for the county. In ~~1443~~,† King Edward IV. confirmed his predecessors charter, and granted to the Abbot and Convent the privilege to nominate a justice of the quorum of the county or some other expert in law to be one of the justices nominated to deliver the Liberty goal. 1442

This restriction was removed by a charter of King Henry VII. in 1492, which conferred on the Abbot the right to appoint all the justices of peace for the Liberty, and to nominate three or four of them to hear and determine all felonies and to deliver the gaol. This Liberty jurisdiction is exercised now, the justices of the peace being appointed by the Crown on the nomination of the Lord of the Liberty, and three or four are selected from time to time to act as justices of gaol delivery.

The Charter of 8 Henry VII., on which Queen Victoria's commission to the Justices of the Liberty is founded, like the earlier charters, contains a non-intromittat clause which precludes the Sheriff of the County of Northampton from exercising his authority in the Liberty: this keeps the prisoners out of his custody so that the ordinary commission of gaol delivery of the justices of assize does not entitle them to deliver prisoners in the Liberty gaol, but the franchise was not, as the Abbots thought, a bar to the power of the justices of the King's Court to deliver a prisoner from the Liberty gaol by issue of a

* Pat. 28, Henry VI., Pt. 2, m. 8.

† Pat. 2, Edw. IV., Pt. 1, m. 10.

writ of *habeas corpus*. An entry of such a writ occurs at f. 140 Reg., Deeping, A.D. 1430, and the Abbot had to obey; but the Liberty justices have contested the efficacy of that writ even in the XIXth century.

The writ was as follows:—

Henricus dei gra Rex Angl: et franco: dns Hibn custodi gaole Abbatie de Burgo Sci Petri Saltm Precipimus tibi firmiter injungentes q^d corpus Thome Colville nuper de Sutton in com: Norht: husbondman in prisona nra sub custodia tua detent ut dicitur una cum causa detentionis sue in eadem habeas coram nobis in crastino Sci Martini ubicunque tunc fuerimus in Anglia ad respondend nobis de placito contemptus et transgressionis et habeas ibi hoc bre. T. W. Cheyn apud Westm^r xvij die Octob: Anno r. r. decimo.

The Liberty of Peterborough is the last county franchise which retains the power to punish by death. The similar jurisdiction of St. Albans was abolished by 37 and 38 Vict. c. 45, which recites that the ancient Liberty of Saint Albans, in the county of Hertford, has a separate commission of the peace, and other privileges, franchises, and jurisdictions, and enacts that there be one commission of the peace for the whole county of Hertford, the county being formed into two divisions with a view to the better transaction of public business and the administration of justice at quarter sessions, and that the privileges, franchises, and jurisdiction of the Liberty do cease. If the Liberty of Peterborough were abolished, no doubt the County of Northampton would be formed into two divisions with one commission of the peace, and 13 and 14 Vict. c. 105 facilitates the union of liberties with counties in which they are situate. The justices can petition the King, and the *custos rotulorum* of the county will then take possession of the liberty records, but the Liberty justices are tenacious of their privileges, and in order to understand them and the history of the gaol the charter of Henry VII. must be read. It is as follows:—

Rex omnibus ad quos &c. Saltm.
Pro Abbe Cum Dns Edwardus nuper Rex Anglie quartus progenitor
de Burgo nror per lras suas patentes quarum dat est vicesimo die
sci Petri mrtii anno regni sui secundo concesserit Ricc tunc Abbi de
Burgo sci Petri et successoribus suis inter alia quod ipse et
successores sui per lras suas patentes facere possint constituere et assignare
inperpetuum justic suos ad omnes et singulos prisonas infra gaolam suam de

Burgo Sci Petri predict jam existent et exnunc existituros deliband quociens et quando sibi placuerit et quod fidem justic sic per eos et Abbem et Conventum et successores suos faciend constituend et assignand eandem potestatem et auctoritatem habeant ad omnia et singula ea faciend exequend et exeroend que ad delibacoem prisone dicti gaole nri pertinent et aliquo modo spectant seu pertinere et spectare debent prout justic sui per ipsum Dom. Regem heredes seu successores sui auctoritate lrar suar patent heredum aut successor suor pro delibacoem prisone gaole sue infra Regnum suum Anglie habent seu habere deberent inde faciend exeroend et exequend Ita tamen quod unus justic suor ad pacem in Com. Norht conservand assignand de le quorum pro tempore existen vel alius jurisperitus sit unus commissarior per dom Abbem et conventum deputand ad p'dcam gaolam deliband prout plenius in dict lris patentis continet. Sciatis quod nos certis consideraonibz nos specialiter movents dedimus et per presentes damus et concedimus Willimo nunc Abbati de Burgo predict et successoribus suis quod ipsi et successores sui habent potestatem et auctoritatem de tempore in tempus ad eor libitum inperpetuum faciend ordinand et constituend ac habeant et constituant ac facere et constituere possint tres vel quatuor sufficientes personas quarum unus in lege terre sit eruditus justic ad pacem per et infra totum burgum de Peterburg ac in per et infra omnia dominia dicti Abbatis et Conventus in com: Norht: ad quecunque felon: transgressiones et alia malefacta infra Burgum sive dominia dicti Abbatis et Conventus in com: predicto ibidem quociens neceess fuerit pro nobis et heredibus nostris inquirend audiend et terminand ac ad faciend omnia et singula ad officia hujusmodi justic pertinent et tam largiter modo et forma prout justic: ad pacem necnom ad felon: transgressiones et alia malefacta quecunque in aliquo com: regni nostri Anglie faciunt seu facere inquirere audire et terminare possint et hoc per mandatum sive warantum ab aliquo hujusmodi justic sic constituend ballivo Abbatis de Burgo predict pro tempore existent dirigend seu faciend Quequidem ballivus sic pro tempore existens inperpetuum habeat potestatem et auctoritatem de tempore in tempus inperpetuum vigore hujusmodi waranti tam ad faciend sumonicoem districcoem retorn execucones brevium preceptorum mandat: et judiciorum infra Burgum et dominia predict: ac omnia singula alia processus et delibacoem ad officium hujusmodi justic et sessiones ad pacem tangen que ad officium vicecomit in aliquo com regni nri Anglie in ea parte pertinet aut pertinere debet Et ulterius dedimus et concessimus prefato Abbati et successoribus suis per presentes quod ipse et successores sui habeant potestatem et auctoritatem de tempore in tempus inperpetuum faciend ordinand et constituend sufficient personam essend Coronatorem per et infra Burgum et dnia p'dict ad faciend et exequend omnia et singula infra Burgum et dnia p'dot que ad officium coronatoris pertinent et quod quil hujusmodi coronator sic ordinat et constitut habeat potestatem et auctoritatem ad faciend omnia et singula per et infra Burgum et dnia illa que ad officium coronatoris pertinent in tam largiter modo et forma prout aliquis coronator in aliquo com. regni nri Angl. facere vel exequi poterit Ita quod nullus coronator in Com. p'dto qui nunc est vel imposterum erit aliquod quod ad officium coronatoris pertinet infra Burgum ac infra omnia dnia p'dot nec ullo modo se intromittat faciat neque exequat Et quod idem coronator pro tempore existend habeat potestatem ad faciend omnia warranta precepta et mandata et omnia singula alia processus que ad officium coronatoris in ea parte pertinent Ballivo dicti Abbatis de Burgo absque eo quod aliquis vicecomit nri vel hered seu successor nror in com: predict ad aliquod quod in ea parte ad officium vicecomitis pertinet infra Burgum seu dnia p'dict ullo modo se intromittat faciat seu exequat In cujus &c. Teste Rege apud Westminstr. xxvij die Junii per breve de privato sigillo et de dat id.*

The Liberty gaol was delivered by the justices nominated by the Abbots till A.D. 1536,* when it was found prejudicial to the royal authority and to the hindrance of justice that any subject should have power to appoint justices of gaol delivery, and to put into commission justices of the peace. May be the condition that there must be one justice expert in the law of the land could not be satisfied. Counsel were no trouble then. Prisoners on trial for felony were not allowed counsel, except where assigned by the Court to argue a point of law, because the evidence to convict must be so manifest that it cannot be contradicted: but in 1836 it was declared to be just and reasonable that prisoners should make full answer and defence by counsel.†

The practice of confirming royal charters at the commencement of each reign has fallen into desuetude. It fed the royal exchequer with good fees, and enabled the King to retract privileges which his predecessors had granted, and reseize franchises where abuse was apparent.‡ The petition of Prelates and Earls against that extension of the prerogative of the Crown, occasioned the Act of 13 Edw. I. c. 7, A.D. 1285, which fixed the form of confirmation thus:—"Inspeximus cartam donacionis concessionis vel confirmacionis," and enacted that the charter was to be transcribed word for word without addition or diminution. The enrolment of the inspeximus charters has preserved much valuable history of Saxon and Norman times.§ King Edgar's charter for the Abbot of Burgh is recited in Roman characters, but in other instances the Saxon characters are transcribed on the Norman rolls.

* 27 Henry VIII., c. 24.

† 6 and 7 Will. IV., c. 114. Witnesses for the prisoner were not sworn till 1701—1 A., Stat. 2, c. 10.

‡ The Abbot of Orowland lost his gaol in this way; per Hussey, T. T., 20 Edw. IV., who was a Lincolnshire squire.—Franchise reseizer.—"En mon pays l'Abbe de Orowland avoit un gaole en qe les prisoners fuerent emprisons et pures qe a un foits il retaigne hommes queux fuerent acquites de felony et auxi averont pay leur gages et fees le Roy reseise le gaol a toute jours et oe fuit pur mieuser son franchise."

§ The stamp duty in a charter of exemplification or constat is 8s. It was a practice to obtain a patent of inspeximus when a charter had been destroyed by misadventure. Pat. 17, Edw. III., Pt. 3, m. 14, in favour of the Convent of Peterborough, is an exemplification of a patent partially burned through careless custody. It was an acknowledgment of a subsidy of one hundred pounds by way of loan to meet the urgent needs of the King's expedition across the Channel.

The charter of King Henry VII. recites that of 2 Edw. IV., which authorised the Abbot and Convent to appoint justices to deliver the Liberty gaol, the same justices to have powers of justices of gaol delivery commissioned by letters patent, but thereafter the Abbot was authorised to appoint justices of the peace, and they were invested with powers of commissioners of gaol delivery.* Thus they ousted the justices commissioned for the shire, and the Liberty bailiff being invested with powers of a sheriff, ousted that officer just as the Coroner for the Liberty excluded the county coroner. This made an end of intrusion by the meddlesome sheriff, but the gaol was the King's gaol, and the Liberty justices were charged as the King's justices, and the proclamation at the opening of the court must have been, "O yes, O yes, my lords the King's justices do strictly charge all manner of persons to keep silence while the King's commission or proclamation is read." The Act of 27 Henry VIII. c. 24, for recontinuing liberties heretofore taken from the Crown, united and knit to the Crown, and for the appointment of all justices by letters patent under the great seal, was wanted long before 1535. It did not, however, curtail the authority of the justices of the peace for the Liberty to exercise the privileges of the franchise in as ample manner as justices of gaol delivery for the shire; but their commission came direct from the Crown.

This Act united the privilege to the Crown, whereas an Act of 32 Hy. VIII., c. 29, A.D. 1540, recites that the Act for the Dissolution of Monasteries did not declare what officers were to exercise franchises, and declares that all franchises and temporal jurisdictions used by former owners of Religious Houses are revived and vested in the King and his heirs. An Act of revivor, keeping alive the Liberty till the See was erected, and the franchise followed the regrant of the hundred of Nassaburg to the Bishop.

* Patent 20 March, 2 Edw. IV., Act, 1462, complementary to the charter of 6 June, 26 Hy. VI., A.D. 1460.

Clerks could not deliver the gaol, because conviction for felony involved the death penalty. In 1299, an Act provided that where one of the justices of assize was a clerk, a discreet knight of the shire was to be associated with the lay justice to deliver the gaol. After 1660, the Court was opened by the reading of King Charles II.'s proclamation against vicious, debauched, and profane persons, who, in pretence of regard to the King, revile and threaten others, or spend their lives in taverns and tippling houses drinking his health. A similar proclamation of Queen Victoria was read after 1860, for the encouragement of piety and virtue, and for preventing and punishing of vice, profaneness, and immorality.

Keepers of the peace were first chosen in 1327 from the most worthy men in the county, but, men of small estate having crept in the commission, the possession of £20 a year in land estate was fixed as a qualification in 1439, and that income qualified for the office of a county justice till 1732, when "the men of mean estate" induced Parliament to raise the qualifying estate to £100 a year from land, and in 1875 the occupancy of a dwelling house assessed to the inhabited house duty in the sum of £100 was made equivalent to the land qualification. The Act of Ric. II., pursuant to which "the great unpaid" received a wage of 4s. a day and the clerk 2s. a day, was not repealed till 1855. Justices for liberties, cities, and boroughs are exempt from property qualification.

CHAPTER III.

The Liberty of the Isle of Ely. Prisons. Demise of the Crown. The Calendar. Benefit of Clergy. Pardons. Homicides. Inquests. The Liberty Coroner. Felo-de-se.

County franchises are not to be confused with "palatine jurisdictions," *ubi brevis regis non currit*, and where, before 27 Henry VIII., the lord of the franchise issued writs in his own name, and commissioned justices. The Duchy of Lancaster formerly enjoyed those royal powers within the compass of the Duchy, and the Chancery Court of the Duchy still exercises full jurisdiction of a court of equity. The palatine jurisdiction of Durham, enjoyed by the Bishop, was transferred to the Crown by 6 and 7 Will. IV., c. 19, together with all forfeitures of lands and goods for treason and felony, all mines of gold and silver, treasure trove, deodands, escheats, fines, and amerciaments. The Bishop of Ely exercised *jura regalia* throughout the Isle till 1836, nominating a Chief Justice,* but that judge's authority to sit in judgment on the King's subjects was derived from his appointment as a justice of peace in the commission for the Isle, which was merely a county franchise, though described as a county palatine in the statutes of the realm. The King's writs have always been directed to the sheriff of Cambridgeshire, and he sent them on for execution to the bailiff of the liberty of the Isle. Such is the position of the Liberty of Peterborough, with a commission to justices of the peace appointed by the Crown to deliver the Liberty gaol, from time to time as occasion requires, or the

* 6 and 7 Will. IV., c. 57. The Bishops' franchise of gaol delivery was based on prescription. They used to appoint justices for the Isle under their own seal, but it was usual to send the Steward to the King's Justices in Eyre at Cambridge for a duplicate of the King's Commission, and the Isle Justices proceeded according to its tenor. Pat. 18 Edw. III. In 1516 the King issued his commission for the delivery of the Isle gaol, and the Crown has always done so since the Act of 27 Hy. VIII.

Lord of the Liberty shall think fit: very different from the commission issued to the King's justices to deliver the county gaol of all prisoners in the custody of the Sheriff. That Commission is of force only for the delivery specified, and for which the judges are appointed. But the Liberty justices remain in commission so long as they are qualified to act as justices of peace. Even the demise of the Crown does not now end the commission; for by 1 Edw. VII. c. 5, the holding of any office under the Crown shall not be affected, nor shall any fresh appointment thereto be rendered necessary, by the demise of the Crown: and by a patent of Feb. 12, 1901, Edward VII. appointed and declared that the commissions of peace of Queen Victoria shall be of full force, and justices thereafter added shall be the King's justices.*

Thus there are two commissions of gaol delivery current at the same time in the County of Northampton. Pursuant to the Local Government Act, 1888, sec. 46, the Soke of Peterborough is a separate Administrative County for the purposes of that Act. County Coroners are now appointed by the County Councils, to whom the writ *de coronatore eligendo* is directed when a vacancy occurs; but this does not extend to Liberties, so the Lord of the Liberty will still appoint the Liberty Coroner. The Custos Rotulorum is appointed by the Crown: the patent of Charles William, Earl Fitzwilliam, is dated Sept. 7, 1837.† Records are in the custody of the Custos Rotulorum or of the Clerk of the Peace. In Counties the Clerk of the Peace, who is appointed by the Standing Joint

* Shakespeare runs through the formalities of courts of law, and his characters know all about the quaint pleadings of civil actions. His fairies mock the proclamation which opens the commission with O yes, O yes, a corruption of the French Oyes. "O'er Hobgoblin, make the fairy oyes." (*Merry Wives*, v. 5.) Pistol was armed with the demise of the Crown, which deprived justices of the peace of authority till they were put in the new commission. Pistol makes his way to Justice Shallow's orchard, and part of the conversation is as follows:—

Shal. I am, Sir, under the King, in some authority.

Pist. Under which, Baconian? speak or die.

Shal. Under King Harry.

Pist. Harry the Fourth? or Fifth?

Shal. Harry the Fourth.

Pist. A straw for thine office!

Sir John, thy tender lambkin now is king;

Harry the Fifth's the man.

From this subtle manner of weaving legal reference into his stories, it is clear that some trained lawyer was a collaborator with the poet. Was it Bacon?

† Pat. 1, Vict., Pt. 4, 11.

Committee of the County Justices and the County Councillors, is responsible, subject to the direction of the Custos Rotulorum, for the records and documents of the County ; and the County Council can provide a place for the convenient keeping of such records ; but this does not extend to the Liberty records.

In 1487, an Act, 3 Henry VII. c. 3, provided that the Sheriff or Lord of the Liberty should certify the names of every prisoner in his keeping at the next general gaol delivery, "there to be Kalendred before the justices of the deliverance of the same gaol." This duty was, by the Prison Act, 1865, transferred to the gaoler, and* must now be performed by the officer whose office embraces the function of gaoler, in cases where there happens to be no gaol, by reason of the operation of the Prison Act, 1877, which abolished all powers exerciseable by the Lord of the Liberty in relation to prisons or prisoners, and vested them in the Home Secretary, who has power to appoint any convenient prison for the confinement of prisoners before trial.† Those Acts have ended the distinction between houses of correction and prisons. Physically, all prisoners are within the walls of the gaol ; yet for purposes of jurisdiction the several cells of the prison are the common gaol of the county or house of correction, according to the offence and exigence of the committal of each prisoner.

Local jurisdiction depends on "venu" or the "visne" from which the jurors are empanelled. The venue is written in the margin of the indictment, and the prisoner charged is triable only for an offence committed within that area. The detention of prisoners from the Liberty in the County gaol till trial, does not affect the jurisdiction of the Liberty justices ; such prisoners are not in the eye of the law subject to the authority of the Sheriff. The Prisons' Act, 1865, sec. 57, enacts that every prison, wheresoever situate, shall for all purposes deemed to be within the limits of the place for which

* Sec. 92. The gaoler shall prepare for the Judges of Assize and justices in Quarter Sessions a calendar of all prisoners in custody for trial at such assizes or gaol sessions.

† By 18 Eliz. c. 3, A.D. 1576, Justices of Peace were to appoint abiding houses to be called houses of correction for punishment of rogues and employment of the poor. The first Poor Relief Act was enacted in 1597.

it is used as a prison. By the Capital Punishments' Act, 1868, judgment of death is to be carried into effect within the walls of the prison in which the offender is confined at the time of execution ; so if any murderer is sentenced at the delivery of the Liberty gaol he will be hanged at Northampton, or wherever he has been imprisoned. Thus the Prisons' Acts enable the Liberty justices to avoid the inconvenience of a hanging at home. The death warrant was formerly by precept under hand and seal of the Judge directed to the Sheriff : now the practice is for the Judge to sign the calendar with the judgment in the margin, and this is left with the Sheriff as his warrant. Reprieves are at the King's pleasure, or by opinion of the Judge, or by necessity of law, *i.e.*, where a prisoner becomes insane. By the Judgment of Death Act, 1823, if the Judge deems the convict a fit subject for royal mercy, he may, instead of pronouncing judgment, order the same to be entered on record.

The old calendars are full of quaint history concerning benefit of clergy, homicides *per infortuniam, aut se defendentes*, &c. Clerks in holy orders were tried by the jury, and if found guilty were delivered to the Bishop of the diocese to which they belonged for purgation. The canonical trial was by a jury of twelve clerks, and the purgation was by oath of innocence, verified by twelve compurgators who testified that they believed in the innocence of the prisoner. In A.D. 1434, John Sherman, a clerk, charged with stealing ten yards of green cloth ("grene of lyre") of the value of ten shillings, the goods of Stephen Cherpound, was found guilty ; and the commissary of the Archdeacon of Northampton, with letters of the Bishop of Lincoln, claimed liberation for transfer to the Bishop's prison at Banbury.* In the margin of the calendar is entered "Lib. prisone Epi."

* An Act of 31 Edw. I. relates to the levy of fines imposed for the escape of clerks convict from the prison of their Ordinary. Capital punishment of a clerk in holy orders is preceded, in the Roman Church, by degradation. It was declared in 1351 (25 Edw. III. St. 6, c. 4) that the privilege of holy church was abused by secular justices who remanded clerks convict to gaol to meet other charges. "Let them hereafter be arraigned once for all."

Early instances occur in 1303 and 1352, where the proceedings are well illustrated. Juries may err: and in the latter case the clerk, Thomas Blome, established his innocence to the satisfaction of the Bishop, so the King sent his writ for the restoration of the convict's goods.

Pro Thoma Blome Rex vicecomiti Norhamtonie salutem. Cum Thomas Blome de Burgo Sancti Petri clericus coram Justiciariis nostris ad gaolam nostram de Burgo Sancti Petri deliberandis assignatis supra crimine furti unius equi furati apud Pappelle precii quinque solidorum et de diversis pannis ibidem furatis ad valenciam trium solidorum de Thoma de Pappelle nuper indicata, et ad requisicionem venerabilis patris H. Episcopi Lincolnensis loci diocesani per eosdem justiciarios eidem Episcopo juxta privilegium clericale prout moris est liberatus, innocentiam suam supra crimine predicto coram eodem Episcopo legitime purgavit, sicut idem Episcopus per literas suas patentes nobis significavit, tibi precipimus quod eidem Thome terras et tenementa bona et catalla sua ea occasione in manum nostram capta, si ea occasione et non alia in manum nostram existant, nisi fugam fecerit occasione furti predicti, sine dilacione restituas de gracia nostra speciali. Teste Rege apud Wodestok decimo die Julii. (Cl. R. 6 Edw. III., m. 18.)

In this case, Thomas Blome, of Peterborough, clerk, had been charged with stealing a horse worth five shillings, and certain cloth worth three shillings, and had been delivered to the Bishop of Lincoln according to custom, and the Bishop had certified by his letters patent that the said Thomas Blome had satisfactorily purged himself of guilt; whereupon the King directed that all his lands, tenements, goods, and chattels, which had by occasion of the charge of theft fallen into the King's hands, should be without delay restored, provided he had not attempted to escape.

The liberation of Robert Castre and Robert Kelsey, A.D. 1303, is fully enrolled in the Register of Abbot Godfrey, fo. 78.

Deliberacio Gaole facta apud Burgum die mercurii proximo post festum Sancti Mathie Apostoli Anno regni regis Edwardi tricesimo secundo per dominos Henricum Spigurnel et Hugonem Wake justiciarios per breve domini Regis supradicti quod breve remanet penes dictos justiciarios ad hoc assignatos coram quibus Robertus de Caste et Robertus de Kelseye clerici de latrocinio indicati et per eosdem justiciarios inculpati et per inquisitionem convicti Domino Godefrido Abbati de Burgo Sancti Petri ad exigendum clericos coram eisdem justiciariis potestatem habent fuerunt liberati ut patet per comissionem domini Lincolnensis Episcopi que sequitur:

Universis ad quos presentes littere pervenerint Johannes permissione divina Lincolnensis Episcopus Salutem in omni salvacione. Universitati vestre notum facimus per presentes quod ad exigendum et recipiendum

vice et auctoritate nostra secundum libertatem ecclesiasticam et regni consuetudinem approbatam quoscumque clericos seu alios viros ecclesiasticos pro quocumque crimine seu transgressionem cunctos et apud Burgum incarceratos et incarcerandos a quibuscumque iusticiariis domini Regis seu aliis ipsos liberandi habentibus potestatem ut de eis fiat in foro ecclesiastico quod secundum canonicas constitutiones fuerit faciendum dilectis in Christo filiis Domino Abbati de Burgo Sancti Petri et Sacriste ejusdem loci conjunctim et divisim vices nostras comitamus cum cohercendis canonicis potestate. In cujus rei testimonium litteras nostras Domino Abbati et Sacriste predictis fieri fecimus has patentes. Datum apud Lydington Kalendis Martii Anno Domini MCCC tertio. Qui quidem Robertus et Robertus ab eodem Abbate quasi in custodia episcopi supradicti admissi in custodia ejusdem Abbatis extiterunt a die supradicta usque diem Jovis in festo Sancti Gregorii proxime sequente quo die Episcopus supradictus deliberacionem dictorum clericorum per Rogerum de Weng clericum suum et per litteram sequentem petit :

Johannes permissione divina Lincolnensis Episcopus dilecto in Christo filio Abbati de Burgo Sancti Petri vel Sacriste loci ejusdem salutem gratiam et benedictionem. Ad recipiendum a vobis Robertum de Castre et Robertum de Kellesey clericos nuper apud Burgum certis de causis incarceratos vobisque tanquam commissariis nostris in hac parte per iusticiarios domini Regis adjudicandum in foro ecclesiastico nostro nomine liberatos Rogerum de Weng clericum nostrum ad vos specialiter destinamus vos rogantes quatenus dictum Rogerum facta sibi liberacione dictarum personarum securum conductum usque ad locum competentem prout vos ipsi decreveritis faciatis habere. Valeta. Datum apud Lydington septimo Idus Martii.

Cujus petitioni resistere nolentes ipsos Robertum et Robertum securum conductum usque Staunford facere dicto Rogero deliberatos fecimus. In presencia Willelmi de Wodeford de Burgo, Johannis Gesthale de eadem, Radulfi de Berkhamstede, Willelmi Wak, Alexandri le Gaunter, et Johannis le Meillour, qui eos admisit sub pena qua decebat.

In this case the incriminated clerks were charged before two Justices, Henry Spigurnel and Hugh Wake, with robbery, and found guilty, and then delivered to Abbot Godfrey, of Peterborough, who, in conjunction with the Sacrist of the Abbey, held a commission from the Bishop of Lincoln to deal with the case. This commission states that the Bishop commits to the Abbot and Sacrist all his rights, "with power of canonical compulsion," with respect to "claiming and receiving in our place and by our authority, according to ecclesiastical liberty and the approved custom of the realm, whatsoever clerks or other ecclesiastics taken for any crime or trespass, and imprisoned or to be imprisoned at Peterborough, by any of the King's Justices or others, so that whatever ought to be done concerning the accused might be done in the ecclesiastical court." The two clerks remained in the custody

of the Abbot from the Wednesday after the feast of S. Matthew till the Thursday after the feast of S. Gregory, that is, from 25 Sept., 1303 till 14 March following, on which day the Bishop demanded their liberation, appointing his clerk Roger Weng to receive them, and directing the Abbot and Sacrist to give them a safe conduct to such suitable place as they might select. "Unwilling to resist this petition" the two Roberts were safely delivered to the said Roger at Stamford.

The "clergy" of clerks convict had to be supported by production of letters of orders or a certificate of a Bishop. The abuse of this privilege was prolonged for centuries. An Act in A.D. 1275, 3 Ed. I. c. 2, refers to the delivery of clerks without due purgation. None under the degree of sub-deacon was within the privilege. An Act of A.D. 1531, 23 Hy. VIII., c. 1, provided for the degradation of convict clerks by the Bishop, and their transfer to the King's officers for execution.* The "benefit of clergy," which prevailed in favour of "lettered persons," was extended by merciful construction of the Judges to laymen. That this should be so, where the death penalty attached to theft, was reasonable; but convicted murderers were within the benefit. The Act, 4 Hy. VII., c. 13, A.D. 1488, recites that divers persons upon trust of this privilege had been bold to commit murder, and provides that such persons should be allowed clergy but once, and be marked on the brawn of the left thumb with M; or T, where convicted of other felonies.† It was the practice for the Ordinary of Assize, a deputy of the Bishop, to attend the judges, to provide the book for malefactors, and to judge whether they read or not; but the judge turned to any passage. To read as a clerk must have been to read the latin vulgate. Then he prayed for the benefit to be allowed by the Court.

* By 18 Eliz., c. 7, A.D. 1576, clerks convict were not to be delivered to the Ordinary but burnt in the hand and set at large.

† By 10 and 11 W. 3, c. 23, s. 6, the brand was to be on the cheek. This seemed unfashionable; and the Act was repealed by 5 Anne, c. 6. In case of notorious murders Acts have been passed to take away the benefit of clergy from the offenders; e.g., 23 Philip and Mary, c. xvii., A.D. 1555, from Benedict Smith for the murder of Giles Rufforde at Alconbury. A woman was not allowed "benefit": for a first offence she was branded on the left thumb with T.

The entry in the calendar is : *Petit librum, legit et brit : Ira T.* "He demands the book, reads, and is branded with the letter T." The passage read by the convict was not always the same; but the first verse of the 51st Psalm, *Miserere mei*, was often selected; and this is known as "the neck verse." This remarkable practice occasioned an Act in 1706, 5 Anne, c. 6, which recites "forasmuch as when any person is convicted of felony within the benefit of clergy upon his prayer to have the benefit thereof allowed him it hath been used to administer a book to him to try whether he can read as a clerk which by experience is found to be of no use": and enacts that without any reading the prisoner shall be punished as a clerk convict. This reduced the practice to an absurdity, but the privilege was not abolished till A.D. 1827 by 7 and 8 Geo. IV., c. 28, sec. 6. This Act provided that convicts for felony were not to suffer death unless for some felony excluded from the "benefit" before 1827.* Witches do not occur in the Liberty calendars. The offence of witchcraft was not known to the common law of England.†

The frequency in the 14th century of charters of pardon for homicides perpetrated in the King's highways, indicate that robbers lurked about the road side. Suggestions for free pardons for homicide were little scrutinised by the Crown officers, and became such a glaring abuse that an Act in A.D. 1328 restricted charters of pardon to homicides done *se defendendo* or *per infortuniam*, and by 17 Edw. III., c. 2, the grounds of the suggestion for a pardon and the name of him who made it were to be stated in the patent.‡

* Shakespeare has many references to "clergy." Jack Cade accuses Lord Say: "Thou hast put poor men in prison and because they could not read hast hanged them." Hy. VI., Pt. 2. IV. 7; and his rixgues are described as "saved by the book." By an Act of 1 H. VI., c. 12, a lord of parliament was allowed clergy as a clerk convict, though he could not read, and without burnings.

† It was made a felony by 33 Hy. VIII., c. 8. The burning of Margaret Jourdain, the witch of Eye, after sentence and relapse, seems to have been without warrant of law. In 2 Hy. VI., II. 8, the Duchess of Gloucester is condemned "For sins such as by God's book are adjudged to death."

‡ In charges of treason a pardon was allowed by the Court, but in cases of felony, after 1336, the issue of a writ of allowance out of Chancery, certifying that the offender had returned bonds of sureties for his good behaviour, was necessary before the King's pardon was pleadable in bar to sentence of the Court.

This pardon of Antony Spalding,* A.D. 1329, for the death of Nicholas le Bowyer, of Peterborough, is in the ordinary form :—

1329 Pro Antonio de Spaldyng de pardon.	Rex omnibus ad quos etc. Salutem. Quia accepimus per recordum dilectorum et fidelium nostrorum Roberti de Malberthorp et Johannis de Canteburige Justiciorum nostrorum ad gaolam nostram de Burgo Sancti Petri deliberandum nuper assignatorum quod Antonius de Spaldyng captus et detentus in gaola predicta pro morte Nicholai le Bowyers de Burgo Sancti Petri apud villam de Burgo Sancti Petri nuper interfecto unde recitatus est interfecit ipsum Nicholaum se defendendo Ita quod mortem propriam aliter evadere non potuit et non per feloniam aut maliciam excoGITatam Nos pietate moti perdonamus eidem Antonio sectam pacis nostre† que ad nos pertinet pro morte predicta et firmam pacem nostram et inde concedimus Ita tamen quod stet recto in Curia nostra si quis versus eum inde loqui voluerit In cujus &c Teste J. de Eltham comite Coanubiensi fratre Regis custode Regis apud Cantuariam xxxi die Maii.
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Pardon for Antony Spalding. The King to all &c Greeting. Having been informed by the record of our trusty and beloved Robert de Malberthorp and John de Cambridge our Justices assigned to deliver our gaol of Peterborough that Antony Spalding was arrested and is detained in that gaol on account of the death of Nicholas le Bowyer of Peterborough lately killed there, and further that he killed the said Nicholas in self-defence since he could no otherwise escape death for himself and not of felonious or malicious purpose We moved by pity pardon the said Antony the breach of our peace which pertains to us by reason of the said homicide and grant him the protection of our peace and that he may be law-worthy in our courts if any one shall challenge him by reason of the said homicide. In witness whereof &c. Witness John of Eltham earl of Cornwall the King's brother and guardian at Canterbury 31 May.†

* 2 H 3, III., pt. 1, m. 12.

† That is, by indictment, which is the King's suit. Ancient pardons for homicide do not in express words pardon murder, and they purport only to bar indictment; but, later, the offence itself was pardoned. Shakspeare has a fine passage (*All's Well*, v. 3) which grasps the restorative force of a free pardon :—

Let him not ask our pardon;
The nature of his great offence is dead,
And deeper than oblivion we do bury
The incensing relics of it.

‡ Similar pardons in 1330 to Henry le Carpenter of Warrington for death of John Hippe; in 1360, to John Wiseman for death of John Seymper of Peterborough. Pat: 1 Hy. IV., Pt. 2. This crime was done in the manner of lynch-law, and at night, Wiseman coming at head of a force and taking the prisoner from custody of the law.

The supplication of an Earl or Privy Councillor was the ground assigned for the grant of pardons for felonies. Thus Hugh, Bailiff of Elton, Huntingdonshire, who had robbed Thomas Sadeler, of Peterborough, of his linen coat, wounded him with a sword, and left him half dead on the highway.* was pardoned at the instance of Thomas, Earl of Buckingham, "our very dear uncle," *carissimi avunculi nostri*.†

Speedy trial and enlargement from "the horrors of the gloomy gaol where misery moans," or else a coroner's inquest, was likely to record a prisoner's deliverance. This was the end of John Marchaunt, of Oundle, as thus recorded :—

Item accidit apud Burgum Sancti Petri in Comitatu Northamptonensi septimo die mensis Februarii anno regni regis supradicti sexto quod quidam Johannes Marchaunt Bocher de Oundell probator domini Regis in gaola domini Regis ibidem existens inventus fuit mortuus et visus fuit per Robertum Eyr unum coronatorum domini Regis in comitatu predicto videlicet Inquisitio capta fuit super visum corporis predicti Johannis per quatuor villatas propinquiores de visinete videlicet Burgum predictum Oastor Thorp et Newerk per sacramentum Roberti Staverne Ricardi Smyth Willelmi Draper de Burgo Reginaldi Draper de eadem Johannis Joly Roberti Wareyn Henrici Hopkyn Johannis Hobbesson Roberti Sandre Willelmi Sandre Willelmi Draper de Newerk et Thome Sandre qui dicunt super sacramentum suum quod predictus Johannes Marchaunt Bocher de Oundill probator domini Regis in dicta gaola existens infirmabatur videlicet decimo die mensis Octobris anno regni regis supradicti quinto et sic languebat per septemdecim septimanas et sic eadem infirmitate cepit mortem et non alio modo confessus et communicatus et quod predictus Johannes Marchaunt Bocher de Oundill probator domini Regis non habuit aliqua bona mobilia nec immobilia ibidem die qua obiit neque alibi.

Verdictum duodecim juratorum coram coronatore Regis de quodam probatore mortuo in gaola Regis apud Burgum.

The verdict of 12 jurors before the King's coroner concerning the death of an approver‡ in the King's gaol at Burgh.

On the 7th day of February in the 6th year of the reign of King Richard II., at Peterborough one John Marchaunt butcher of Oundle an approver for the King being in the King's gaol there was found dead and was viewed by Robert Eyr one of the King's

* 1380. Pat. 3 Rich. II. Part 3, m. 6.—By 7 & 8 Geo. IV. c. 23, a warrant under the sign manual, countersigned by a Secretary of State, has the effect of a free pardon under the great seal.

† This was Thomas of Woodstock, afterwards Duke of Gloucester, great-uncle of Richard II.

‡ King's evidence.

coroners in the County. And inquest being taken with view of the body of the said John by the four nearest townships in the neighbourhood to wit Burgh Castor Thorp and Newerk by the oath &c. &c. who say on oath that the foresaid John Marchaunt &c. being in the said gaol sickened to wit on the 10th of October in the 5th year of said reign and languished for 17 weeks and so died of that infirmity and not otherwise having confessed himself and communicated And the said John on the day he died possessed not any property movable or real there or elsewhere.

Before A.D. 1492, the County coroner exercised jurisdiction in the Liberty. There are instances on the Coroner's Rolls, 12 Ed. I. to 20 Ed. II. In 1314, Sep. 20, John Baker, of Pilagate, who died from violence in his house there, was buried without view of the coroner. Then R. de Vere, coroner of the Shire, came and disinterred the body, and finding wounds on John's head summoned the inquest; who by their verdict found that "said John was beating his wife Emma and she raised the hue. Her brother coming mortally wounded John with an axe." So Emma and her brother were delivered to the bailiffs of the Abbot of Burgh.*

The third clause of Henry VII's charter authorised the Abbot and his successors to appoint a coroner to act within the town of Burgh, and all the domains of the Abbey, *i.e.*, the Eight Hundreds, to the exclusion of the County coroners: hence a prisoner may be arraigned for murder at the Liberty gaol delivery on the verdict of the coroner's inquisition. Since the erection of the Bishopric, the Liberty coroner's jurisdiction has been restricted to the limits of the hundred of Nassaburgh, which forms the Soke of Peterborough.

* Coroner's Rolls. Selden Soc., vol. ix., 1895. Formerly the function of the coroner was extensive, and he was not excluded from franchises, even when the Sheriff was. The office was originally gratuitous, but by 8 Hy. VII. c. 1, he was to have 12s. 4d. upon an indictment found for murder of the goods of the murderer, or if he have none, of the amercement of any township which shall suffer an escape of the murderer.

The *felo-de-se*, or self-murderer, so found by the inquest, was formerly, pursuant to the coroner's warrant, buried in the King's highway, so that

“Wheels may go over his head,
And his bones be shaken with pain,”*

and, where cross-roads meet, with a stake driven through his body.† This practice was suppressed by 4 Geo. IV. c. 52, which directs that such burials shall be at night without Christian rites, and now, pursuant to the *Felo-de-se* Act, 1882, the coroner directs the interment of a *felo-de-se* to be in the parish church yard or burial ground, and his kindred may, pursuant to the Burial Act, 1880, hold any orderly service at the interment.

* See Ric. II., iii. 3, where the King in his misery cries :—
I'll be buried in the King's highway
Some way of common trade, where subjects' feet
May hourly trample on their sovereign's head.

† See Vol. 2, Art. 386. A *felo-de-se* was buried in the highway at Norman Cross, A.D. 1813. The crime is in the nature of murder, the killing being resolved in the mind before the act done. In homicide or manslaughter the killing is felonious, but without malice prepense. The nature of the crime of *felo-de-se* puzzled lawyers for ages. If the act was complete during life the felon's estate was forfeit to the Crown. The Sexton's remarks on crowner's quest law in *Hamlet*, V. I, refers to Sir James Hale's case. The report in *Plowden*, Ed. 1578, fills 23 pages in law-french. Sir James, who was a Judge of the Common Bench, drowned himself.

Hamlet, V., Scene 1.—1st Clo: Give me leave. Here lies the water; good: here stands the man; good: if the man go to this water and drown himself, it is, will he, nill he, he goes; mark you that? but if the water come to him and drown him he drowns not himself. Argal, he that is not guilty of his own death, shortens not his own life.

2nd Clo: But is this law?

1st Clo. Ay, marry is't; crowner's-quest law.

CHAPTER IV.

Abbot Kirton. The Countess of Richmond. The Suppression of the Monastery. Bishop Scambler. Thurlby Manor. Lord Burghley. Surrender of the Liberty. Its Boundaries. Mr. Mountstephen. The Commissions of Oyer and Terminer and Gaol Delivery. The Non-intromittat Clause. Custos Rotulorum.

By an Indenture dated 19th June, 7 Henry VII., and made between Margaret, Countess of Richmond, and Robert Kirton, Abbot of the King's monastery of Peterborough, a long contest about their conflicting claims within the Liberty was ended. The Abbot and his predecessors "by a long space had made diligent and humble sute to the said Princesse and hir right honorable counsaill" to be restored to their rights within the manors and towns of Maxey, Norborowe, Woodcroft, and Lolham, "and also to have in all those lordships manors and towns catalla felonum fugitivorum suspensorum fines amerciamenta and all other forfaictures retornatus brevium execuciones eordem waif and streif within all his Eight Hundreds and within all his liberty of Borough Soken." In 1512, King Henry VIII. corroborated and confirmed this indenture by letters patent.* The Abbot's exclusive rights to view of frankpledge and to collect tolls at Deeping Gate were established against a claim of the Countess, which was based on a grant of the hundred of Langdike, made by Abbot Nicholas to Geoffrey Delamer, lord of Maxey and Norborowe, in 32nd year of Edward I., the Lady Margaret "of hir vertueux and godly mynde intending the ministration of justice and that the Abbot and convent and their successors shuld the more quietly and devoutly attende the service of Almighty God."

* Pat. 3 Hy. VIII., Pt. 2, No. 20.

Abbot Kirton resigned his office in 1527, but he out-lived the Monastery, which was suppressed in 1539 pursuant to the Act of 31 Hy. VIII., c. 13, and the privileges* which would have merged in the Crown were kept alive by 32 Hy. VIII., s. 20.† Up to this time the franchise of the Soke of Peterborough prevailed throughout the eight hundreds, in which the domains of the Abbots lay, and during the abeyance of the Liberty the delivery of the gaol was made under commissions issued by the Crown.‡

The Liberty of the Eight Hundreds included Polebrook, Navesford, and Huxlow, which extended as far south as Wellingsborough and Higham Ferrers. By an Act of 24 Edw. I. the hundreds of South Naveslund, North Naveslund, and Thingden were merged in Huxlow. Thingden lordship was a soke, and there were gallows there till 1720. A hundred of a county often included a hundred of a vill or burgh—the case of Nassaburgh and the vill of Burgh. Queen Catherine's jointure included the hundred of Polebrook, Navesford, and Huxlow, as held by the Abbot, with all privileges and franchises belonging to them. They reverted to the Crown, and James I. granted them, with all liberties and privileges, to John Eldred and William Whitmore. Pat. 9 Jac. 1., April 8 and June 11. These grantees seem to have been nominees. They sold Navesford to Sir Edw. Montague, and thus it passed to the Duke of Montague, who, 13 Jac. I., pleaded in answer to a *Quo warranto* that he exercised the jurisdiction by grant of the Crown.

By royal charter of Sept. 4, 1541, the bishoprick of Peterborough was erected, and in the charter of endowment the

* Privileges which are parcel of the garland of the Crown, bona et cat: fel: &c., would merge with reverter of the possessions, but franchises created by the King, such as a hundred, leet, or fair, would remain in esse and revive with the regnant of the possessions. Abb: of Strata Marcella's case. Rep. 9, 24a.

† 7 Sept., 1540. Pat. 32 Hy. VIII., Pt. 2, m. 19d. Comm: of gaol delivery to John Lord Russel, great Admiral of England, Sir Edw. Montagu, Thos: Brudenell, John Lane, John Turnour, Will. Dudley, Rob. Wyngfield, Rob: Brown, and Ric: Cecyll. The like. 4 Feb., 1541.

‡ An Act for the revivor and vesting in the King all franchises and jurisdictions used by lords of religious houses. Thus general words in the patents sufficed to invest the Bishop with all jurisdictions enjoyed by the Abbot, except privileges of sanctuary in church and churchyard or cemeteries for tuition of transgressors.

King did not regrant to the Bishop the right to exercise the privileges of the Abbots throughout the eight hundreds, but restricted such right to the hundred of Nassaburgh, "Ac etiam totum hundredum nostrum de Nasso Burgi alias the Nesse of Borough in eodem comitatu nostro Northampton," and Bishop John Chambers and his successors, bishops Poole and Scambler,* exercised the jurisdiction conferred by Henry VII.'s charter till A.D. 1576, when the last named prelate, by an indenture of 20th December, witnessing that he for himself and his successors "hathe geven granted confirmed and surrendered to our soveraigne ladie the Queen's majestie all that his mannor and lordshippe of Thurlby† in the county of Lincoln and the woods called the Parke, Elsaue, Abbotswood, Westwood and the Doles; and the meadows called Tanholt, Tanholt Herne, the New Close and New Frith adjoining Thorney Barr; and Rumply Furrows, the Bynne, and Oxeney Lees and the close called the Carre in Eye, and

All that the hundred of the Nesse of Bourghe otherwise called the Nasse of Boroughe in the said countie of Northt: and all and singular courts-barons, courts leete, viewes of franckpledge, hundred courts, and all other rights, jurisdictions, franchises privileges, liberties whatsoever unto the said hundred by any means belonging or apperteyning.

The deed of surrender saved the bishop harmless from fees due to the Bailiff of the Liberty and to the Steward of the Court leet holden at Langdike:‡

And furthermore the said Bishop dothe grante such roome and place of imprisonment within the gaole of the said bishop within his palace of

* Pat. 33 Hy. VIII., pt. 3, 13. By a patent of same date, the fabric of the Cathedral was granted to the Dean and Chapter; also the manor of the town and the court-leet and court of pleas.

† The Church was consecrated by Bp. Bloet, A.D. 1112. In 1231, a boundary between Thurlby and the lands of Hugh Wake, lord of Brunne, was fixed by survey.

‡ The leet or law-day is the court itself. In Saxon times a meeting in the field of all inhabitants between 12 and 60 (except clerks and women) who were sworn to fealty and allegiance. *Visus franci plegii*, i.e., the survey of 9 pledges for good behaviour, which every man was required to find. The decennar presented those who were not duly entered in a tithing. Langdike Court was held before the suppression at Ostor, and afterwards by Lord Exeter at Langdike bush, near the Warren-horse in Helpeton Heath.

Who has a breast so pure
But some uncleanly apprehensions
Keep leets and law-days and in sessions sit
With meditations lawful?—*Othello* III., 3 140.

Peterborough as heretofore hath bene accustomed to be had and used for the safe keeping of fellons and offenders.*

What "moved" the Bishop to alienate the ancient heritage of the Church is clearly stated by one of his successors, Bishop White, who writes :—

Scambler† resigned a good part of his bishoprick into the Queen's hands from whom the Lord Burghley got it or as his family says bought it. He had formerly been chaplain to Lord Burghley and by his means had been preferred to Peterborough on design to make him in a capacity for this service which was laboured for above 20 years as the tradition says at Peterborough.

But certain it is that the Bishop was on intimate terms with the Cecil family. He was godfather to two of Lord Burghley's grandsons, and at this very time Sir Thomas Cecil wrote to his father, "My Lord of Peterborough hath moved me speak unto your lordship for the procuring in reversion unto his son the office of foreign opposership which one Southrowe hath for term of life."

The lord bishop was poor, and his neighbour, the Queen's Treasurer, was rich. That minister possessed church lands within the hundred of Nassaburgh, and was building himself a lordly palace on the site of the convent of St. Michael's, close by Stamford Town. Lead from the roofs of ruined priories, and the squared stone of the fabric of disused churches completed his house, but he sighed to be "grand seigneur," and had a longing to be lord of a royal franchise. A prelate's scruples might be compassed: a translation was an easy way to soothe the dread of the strange imprecation of the Church against alienators of her domain: but there was an Act of

* The gaol was, in 1540, at the south side of the Palace. Afterwards a building was used just within the Abbey gate. It is figured in Britton's *Antiquities*, 1830. It was a gloomy vault in which a great wooden cage was made to secure the prisoners. Fetters could only be used by royal licence. A statute of 32 Edw. I. describes the gaol as "une cage de fort latiz," hence Shakespeare, 3 Hy. VI., IV. 3, describes Cade, "Born under a hedge, for his father had never a house but the cage; whipped three market days together and burnt 't the hand."

† Edmund Scambler, bishop, 1560 to 1564, was succeeded by Richard Howland, of whom Baker, in his history of St. John's College, Cambridge, says: "He succeeded Bp. Scambler, a man that will never be forgot in that age and because the revenues of his Church were much impaired he was allowed to hold his Masterahip 2 years with his new preferment. My Lord Burghley had made so free with that church that he had reason to wish to have a friend there that would give him no uneasiness. How this man acquitted himself is beyond my purpose, but he continued in this Church in the neighbourhood of Burghley all his days."

1 Eliz., c. 19, which made utterly void and of none effect all grants and conveyances of church possessions by any bishop to any person whatsoever, *the Queen's highness only excepted*. It was clear enough that the prelate might surrender to the Queen, and that her highness could grant to the minister: and by that device Lord Burghley became lord of the Liberty. On the 23rd of March next after the surrender by the Bishop, the Queen, of her especial grace, certain knowledge and mere motion, granted to William, Lord Burghley, and Sir Thomas Cecil, Kt., his son and heir, in recognition of their good and faithful services, all the rights accruing to her highness by the indenture of the 20 Dec., 1576.

The grant to Lord Burghley is as follows:—

This Indenture made the thre and twentieth daye of Marche in the nynetenth yeare of the raigne of our Sov^aigne lady Elizabeth by the grace of God Quene of England fraunce and Ireland defender of the faith &c Betwene the same our said sov^aigne lady the Quene of thone partie And Syr William Cecill of the moste noble order of the garter Knight lord Burghley and highe Treasurer of England and Syr Thomas Cecill K^t. sonne and heyre apparaunte of the saide lorde Burghley of thother partie Witnesseth that where the rev^dend father in God Edmund Skambler now busshoppe of the Borough of Saynte Peter otherwyse called Peter Burghie in the countie of Northt. by his Indenture under his seale and conformed by the Deane and Chapter of the Boroughe of Saynt Peter otherwyse commonly called Peter Burghie and enrolled in the Highe Courte of Chauncery bearing date the twentieth daye of December in the yeare aforesaid made betwene our saide sov^aigne lady the Quene of thone parte And the said Busshoppe of thother partie hathe geven graunted and surrendered to our saide Sov^aign lady the Quene all that the mannor and lordshippe of Thurlby alias Thurlebye with the appurtenants in the Countie of Lincoln and also certain woodes underwoods and hereditaments called or known by the sev^all names of the Parke, Elsaue, Abbots Woode, West woode and the dooles in Thurleby aforesaid together with dyvers other lands tents and hereds in the said countie of Lincoln And also all and singular those his lands tents and hereds called or known by the sev^all names of Tanholt, Tanholt herne the Newe close the Newe frythe Rumpley furrowes, the Bynne, Oxney lees and the Carre together with dyvers other lands tents and hereds within the towne hamlett lordshipp or paryshe of Eye in the countie of Northt And also all that the hundred of the Nesse of Burghie otherwyse called the Nesse of Borough in the saide countie of Northt together with all and singular the mores marishes wast grounds commons waters fysshings fynes yssues amerciaments Courte leets liberties franchisees wayves strayes goods and cattals of fellons and fugetyves and all other juryadiccions liberties profits comodities and hereds whatsoever to the saide hundred by any meanes belonging or appertayning And also all that the mannor of Sowthorpe otherwise called Sowthorphall with thappurts in Sowthorpe in the parish of Barnack in the saide Countie Northt with a certain Wood called Thomlyns Woode alias

Indentura inter
Dominam
Reginam et
Dominum
Burghley et al:

Thomas Woode and the other woods underwoods and hedgrowes and other hereds whatsoever to the saide manner of Sowthorpe otherwise called Sowthorphall in any wyse belonging or appertayning with dyvers other lands tents and hereds mencioned and expressed in the saide indenture To have and to holde all and singular the premyssees together with dyvers other things mencioned and expressed in the saide indenture to our saide Sov'aigne Lady the Quene her heyres and successors yelding and paying therefore yerely to the saide Busshoppe and his successors certayne severall yerely rents as by the same indenture wherein is conteyned dyvers other covenants and agreaments more playnly dothe and maye appeare* Our said Sov'aign Lady the Quene for and in consideracon of the good and faythfull service to her heretofore doune by the saide William lord Burghley and the saide Syr Thomas Cecill Knight and for dyvers other consideracions her specially moving of her speciall grace certayne knowledge and mere mocion hath geven and graunted and by these presents for her her heyres and successors dothe fully and clerely geve and graunte unto the saide William lorde Burghley and Syr Thomas Cecill All that the saide mannor and lordshippe of Thurlby alias Thurlbye with thappurtenaunts in the countie of Lincoln and all and singular howses buildings dovehouses mylnes waters fysshings lands tents meadowes pastures feedings comons heathes woods fennes moores marishes and other hereditaments whatsoever with thappurtenaunts in Thurlby aforesaid in the saide countie of Lincoln and by the saide Busshoppe of Peter Burgh geven and graunted to our said Sov'aign Ladye by the indenture aforesaide And also all and singular the said woods underwoods and hereditaments whatsoever called or known by the severall names of the Parke, Elsaue, Abbots wood, West wood the dooles and all other the woods trees hedgerowes and other hereditaments whateoever to the saide mannor and lordshippe of Thurlby belonging or appertayning And also all and singular the lands tents meadowes leasowes closures pastures feedings fennes and marishes called or known by the name or names of Tanholt and Tanholt herne conteynynge two pastures or moe adjoyning upon Oxney herne and Thorney Barre in length and also certayne closes and pastures called the Newe Close and the Newe frythe adjoyning on the northe syde of Tanholt aforesaid and also fower closes or pastures called Rumpley furrowes and one close called the Bynne adjoyning to the same and one other close of pasture called Oxney leas. With a parcell of grounde called the Carre thereunto adjoyning lying and being within the towne hamlett lonshippe or paryshe of Eye in the saide countie of Northt And also all that the saide hundred of the Nease of Burgh otherwyse called the Nease of Borough in the saide Countie of Northt And all and singular moores marishes wastgrounds and comons together with the driffes of the same and all ryvers waters fysshings Courtes barons Courtes leets viewes of francke pledge hundred courtes fynes issues amercyaments shyreffes fynes fynes or rents for Castle Warde, wards, mariage escheats, releifes, knyghtes fees, goods and cattails of fellons and fugetyves and of felonnes of themselves and of all other parsons that be or shalbe outlawed for felony or put in exigant for felony and all yssues fynes and amercyaments forfeited or hereafter to be forfeited before any justices or justice and all other rights juryediccions franchises pryvileges liberties profitts comodities forfeitures and hereditaments whatsoever unto the saide hundred by any meanes belonging or appertayning or as parte parcell or member of the saide hundred or of the liberties franchises or pryveleges of the same before this tyme hadd taken used demysed or reputed And also all that the mannor of Sowthorp or Sowthorphall with thappurtenaunts in Sowthorp in the parish of Barnacke in the saide countie of Northt. with a certen

* Annual rents reserved to the Bishop, for Thurlby, £28; for Tanholt, £26; for the hundred of the Nease, £2 6s. 8d.; for Southorpe, £5 15s. 4d.

woode called Thomlynswoode alias Thomas Woode with all other woods underwoods hedgrowes and other hereditaments whatsoever to the said mannor of Sowthorpehall in anywise belonging or apperteyning And also all and singular other the messuages lands tents woods underwoods rents revercions services liberties franchises pryveleges and hereditaments with the severall yerely rents and revercions of the same whatsoever in Thurby alias Thurlebye in the saide countie of Lincoln And in Tanholt Tanholt herne and in the lordshippe and paryshe of Eye in the saide countie of Northt and in Sowthorp otherwise called Sowthorpehall within the parish of Barnacke in the said countie of Northt. and ellswhere in the said counties of Lincoln and Northt. which the said Busshoppe of Peterborough by the indenture aforesaide hath geven or graunted to our said Sovereign ladye the Quene her heyres and successors dothe fully and clerely geve and graunte unto the saide William lord Burghley and Syr Thomas Cecill the saide indenture of graunte before in these presents rehersed And also all other dedes charters evydences and wrytings concerning onely the premysses or onely anye parte or parcell thereof And furthermore our saide Sovereign Ladye the Quene of her especiall grace certayne knowledge and mere mocion hathe geven and graunted and by these for her her heyres and successors dothe fullye and clerely geve and graunte unto the saide William lord Burghley and Syr Thomas Cecill all suche and the lyke liberties franchises pryveleges Courts leets viewes of francke pledges hundred courts fynes yssues amercyments fynes for lycence of concord and all other fynes yssues amercyments aswell real as other and all goods and cattalls of fellons and fugetyves fellons of themselves and parsons attaynted or outlawed of anye manner of felonye and also all suche and the lyke juryadiciouns liberties retourne of wrytts and preceptis profits comodities forfeitures and hereditaments whatsoever which the said Edmonde nowe Busshoppe of the Borough of Saynt Peter otherwyse commonly called Peterborough or of anye his predecessors busshoppes of Peterborough or the late Abbot of Peterborough or anye his predecessors abbots or other parson or parsons ever lawfully had helde used or enjoyed within the saide mannors lordshipps lands tenements hundreds and hereditaments before by these presents geven and graunted by usage or custome whatsoever To have and to holde all and singular the saide mannors and lordshipps of Thurby alias Thurlebye and Sowthorpehall and all other the saide lands tents hundred liberties franchises pryveleges profits comodities hereditaments and other the premysses whatsoever before by these presents geven and graunted unto the saide William lorde Burghley and Syr Thomas Cecill and to the heyres of the saide lord Burghley to thonlye use and behoofe of the saide William lorde Burghley and Syr Thomas Cecill and of the heyres of the saide lorde Burghley for ever To hold of our saide Sovereign ladye the Quene her heyres and successors as of the mannor of East Greenwich* in the countie of Kent by fealtye onely in comon socage and not in capite And also yeldinge and paying for all and singular the premisses before by these presents geven and graunted unto the saide Busshoppe of Peterborough and his successors the severall yerely rents to the same Busshopp and his successors reserved in and by the saide indenture before mencioned at the dayes and feasts the saide indenture expressed by even porcions to be payde And our said sovereign Ladye the Quene for her her heyres and successors dothe graunte unto the saide William Lorde Burghley and Syr Thomas Cecill and to the heyres of the saide lord Burghley that this present gifte and graunte shall stand and remayne good and effectual in the lawe to all entents and purposes

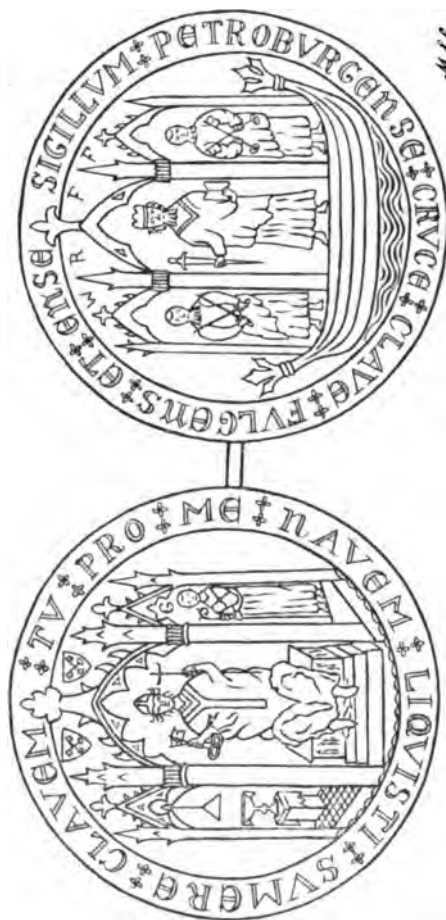
* East Greenwich, to distinguish it from Deptford then known as West Greenwich. In Saxon times it formed part of the manor of Lewisham which belonged to that alien priory. In 1414, when alien priories were dissolved, it came to the Crown and was granted to the prior of Shene, from whom Henry VIII. acquired it by exchange for the site of the priory of Bradwell, Bucks., in 1530.

althoughe noe express mencoon be made of the yerely value and certayntie of the premisses before by these presents geven and graunted or of anye former gyfte or graunte heretofore made to the saide William lorde Burghley and Syr Thomas Cecill any lawe statute ordonance provision or restraynt to the contrary notwithstanding And that also the saide William lorde Burghley and Syr Thomas Cecill shall have the one parte of this indenture sealed with the grete seale of England without any fyne or fee grete or smale therefor to be paide to our saide Sovereign lady the Quene or to her use in her hamper or elsewhere and in consideracon thereof the saide William lorde Burghley and Syr Thomas Cecill covenanten and graunten and either of them severally for hymselfe his heysr and assignes dothe covenante and graunte to and with our saide Sovereign lady the Quene her heysr and successors by these presents that they the saide William lorde Burghley and Syr Thomas Cecill or one of them or the heysr and assignes of the said lorde Burghley shall and will not onely from hensforth at all tymes content and paye to the saide Bushopp of Peterborough and his successors the severall yerely rents before in the saide indenture mencioned and to the saide Bushoppe reserved But also shall and will at all times from henceforth accomlishe performe fulfill and kepe all and singular suche covenauents graunts articles premisses and agreements as in and by the saide indenture before mencioned on the partye and behalfe our saide Sovereign lady the Quene her heysr and successors are to be observed performed fulfilled and kepte and thereof shall and will acquite and discharge or otherwise save and kepe harmless our saide Sovereigne ladye the Quene her heysr and successors for ever In Witness whereof to the one parte of these indentures remaynyng with the saide William lorde Burghley and Syr Thomas Cecyll our saide Sovereign lady the Quene hathe caused her grete seale of England to be putt and to the other parte of these presents remaynyng with our sovereign lady the Quene the saide William lorde Burghley and Syr Thomas Cecill have putt theire seales the daye and yeare first above wrytten.

Lutley.

Thus the grant to the Lord Treasurer passed the Great Seal free of fine or fee, great or small. The transaction was condemned by all. There seems to have been nothing simoniacal about it, but a turpitude attaches to the memory of the bishop who alienated the patrimony of the Church, and to the statesman who was a spoiler of her revenues.

The limits of the Liberty lie within the bounds of the hundred of Nassaburg, between the ancient channels of the rivers Nene and Welland as they joined near Crowland, and bounded on the west by the adjoining hundred of Willibrook, thus including villages west of the present route of the Great North road from Wansford bridge to Stamford Town, which was by King John's Charter taken for the west boundary of the hundred of the Nesse of Burgh, as it was disafforested in A.D. 1214; but the track of that road has varied, and in a charter of the next year the exemptions and privileges of the



OBVERSE.

Geo C. Caster, Peterborough.

REVERSE.

MS.
1905.

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SIGILLUM COMMUNE DE BURGO SANCTI PETRI.

Copied from the Deed of Acknowledgment of Supremacy, A.D. 1534. R.O. Chapter House Books: A. 8. 3, 103^{ee}

Knights and free tenants of the Abbot are described as prevailing throughout the whole hundred of the Nesse. The style "Liberty" seems to have sprung from the privilege to hunt and keep dogs with their claws on, rather than from the power to hang the inhabitants of the Soke.*

The Charter Roll, 11 Hy. III., Pt. 1, m. 18, A.D., 1227, recites King John's Charter, and describes the same boundary: "inter aquam de Nen et aquam de Weland sicut aque conveniunt in Croyland et de Walmesford sicut magnam chimum extendit se usque Stupendistan extra villa de Stamford." The eastern boundary was formed by a stream from Finsit to Greynes and to Folewardsteking across to the Welland, thus excluding the 400 acre fen, which, according to an inquisition of 1268, lay within the limits of Lincolnshire: but Alderland answers the description in King John's Charter, for it lies between the streams of the Nene and Welland, where they meet at Croyland Bridge. The writ of 52 Henry III. directs the Sheriff of Lincoln to inquire "utrum illa pars ville de Croyland que est inter aquas de Neen et Weyland et totus locus infra metas situs Abbacie de Croyland in carta nostro quam Abbas de Croyland inde habet contentas sicut tota illa villa de Croyland ex alia parte aquar p'dcar respondeant et respondere consueverunt comitatu nostro Lincoln Et si Abbas de Burgo hundredum suum de Nasso Burgi quod est de corpore

* MSS. de Foresta, "habere canes inexpeditatos," and to hunt hares, foxes, and cats. Ancient charters describe the Abbot's soke within the two hundreds of the Nesse. Those refer to the Nesse as distinct from the Vill of Burgh, but later charters refer to the eight hundreds, and the jurisdiction of the Liberty coroner appointed under Hy. VII.'s charter prevailed throughout the eight hundreds. A burgh is equivalent to a hundred.

S.P. Eliz. xxiv., 27. A town within the soke or jurisdiction of another resembles an honor. Soc = all the power by which territorial jurisdiction was exercised by trial and mulct.

The best exposition of Sok and Sak is given in a Darenty Coucher of

Sok hoc est secta de hominibus in curia nostra secundum consuetudinem regni.

Sak hoc est placitum de emendando de transgressionem hominum in curia nostra

Q. sak Anglice scheson gallice et dicitur forsithe.

The Liberty escaped the notice of the Legislature in 1697 in an Act about the settlement of the poor. That was rectified by 9 Geo. I., c. 7, which enacts that the justices within the liberty of the borough of Saint Peter and hundred of Nasseburgh shall hear and determine all appeals against orders for removal of the poor as they might have done before the Act of 1697. By the Highway Act, 1863, sec. 2, for the purposes of the Act, all liberties and franchises, except the liberty of Saint Albans, shall be considered as forming part of that county by which they are surrounded; but by 41 and 42, V. c. 77, sec. 38, liberties exempt from the county rates were restored as county authorities and deemed to be separate counties, and these highway powers were transferred to the County Council by the Local Government Act, 1888, sec. 3, viii.

comitat: Norhamtonie preter assensum et voluntatem Abbatis de Croyland tenere consueverit infra metas predictas nec ne."

The Liberty boundary leaves the Nene just above Wansford Bridge, then passes along the King's Cliffe road and northwards, including Bedford Purlieus and parishes of Thornhaugh and Wittering, then across the White Water reservoir, excluding the Race Course and including Wothorpe farm, and so to the Welland.

The first bishops seem to have hesitated to exercise their criminal jurisdiction in plenitude; it may be the earliest commissions for delivery of the gaol were specially restricted to one occasion, like those for the County. In 1562, Mr. Mountsteven wrote to Sir William Cecil, explaining the neglect of the Justices to keep the Sessions, thus:—

To the right honorable and my singuler good Master Sir William Cyeell Knight Chiefe Secretary to the Quenes Majestie.

My duty unto your honor in most humble wyse held in memory right hertily thankynge the same for your honorable and kynde letters most underserved of me. Hit maie please your honor tunderstande that Mr. Mountague being all this vacacons and yet at London and Mr. Hunt so busied on his behalf as yet hetherto the Sessions of Gayle Deliverie are not kepte. Nevertheless at length the same are appoynted and proclaymed accordingly and are to be holden here at Peterbrugh the next thursdale xxiiijth hujus mensis. Whereat Mr. Myldmaile, to whom I shewed the commission, will be verie willingly and he hath put me in hope to take a power symple lodgyng with me at nyght the sessions endid. And my lorde Bushoppe partly in respecte of Mr. Mildmaile's comynge ys desirous to dyne hym and the rest of the commissioners and therefor hath requested to have a quarter of venison wherefor I have wreten to Mr. Kempe* being the rather boldened so to do through the bushoppes request thereof. Maie hit further please your honor to be advertysed that there ys a certen church wythen this dioces called Artleborough als Irthlyngborow† devasted and in utter ruyne and the paryshoners otherwyse sufficiently provided of a church: the same paryshoners have sued to my lorde bushoppe as ordynarie and to the Deane and Chapytre as being patrones thereof for the byenge of the same for certen uses And I havinge intelligens there of and remembreinge your honors dayle necessitie of lead where wyth the same churche ys covered I brake thereof to my saide Lorde And there uppon he staled and promysed me your honor shulde have his interest frely albehit he saide he was offeryd xxth marks for his Lp's goodwill therein. This don I brake with Mr. Latymer our Deane therein wythout using myche in beatynge in that behalfe and he shewed me the leade ys

* Lord Burghley's agent at Burghley House. The deer were in the park.

† Pat. 49, B. III., pt. 1, m. 33; 3, E. 2, pt. 2, m. 31. A.D. 1383. Licence for 20 marks paid by Joan, widow of John Fyel for Bp. of L. to erect parish Church of St. Peter, Irthlingboro, into a collegiate church, consisting of 6 canons secular, and one of them to be dean, and 4 beneficed clerks, the presentations to be alternately in the Abbot and Convent of Peterborough and the heirs of John Fyel, pursuant to Letters Apostolic of Pope Gregory XI.

wourthe^{xii} and better, as indeed I understand hit ys, and I shewed Mr. Deane how that I have spoken wyth my L. and of his comformyte therein and then he shewed me no man shulde have hit from your honor and saide that verie shortly he mynded to returne to the courte where he wyll speke with your honor therein. Your Honors comandment in the behalfe of my Lorde of Bedforde I have withall diligence accomplyshed towchinge such evidenses and charters as ar in my keping. Mr. Vyllers* a verye poore gent. and my neighbour hathe often desired me with his humble and hertie comendacions unto your honor to beseeche the same to bestowe hym in some convenyent place of service of the Quene's Mat^{ies} where he maie by his honest diligence gett some parte of his livinge which he is utterly voide of, the more ys the petie. Thus remaynyng on my behalf not onely desirous but also redye to do your honor some acceptable service I right humble commende the same to you: from Peterburgh 17^o Sept^r. 1562.

Your honors bounden Servaunte

John Mountstevings.†

The Bishop may not have known that the revocation of the clause of King Henry VII.'s charter, so far as it related to putting justices in commission, did not repeal the general power given to the justices in the commission of the peace for the liberty to nominate justices to make deliverance of prisoners in the gaol; but Lord Burghley, who had the rolls under his thumb, must have known all about the jurisdiction, and would not fail when he supplanted the Bishop, in 1577, to put the Commissions of Oyer and Terminer and Gaol Delivery in the right form.‡

The Commission of Oyer and Terminer of Justices on circuit "for this time to hear and determine," extends to all towns named in the commission, words which are omitted in the Liberty commissions, and there is a separate commission to deliver each county gaol. The last commissions granted by Queen Victoria to the Liberty justices, dated 22 December, 9 Vict., are in form as follows:—

* P.C. Reg., 7 Apl. 1554. Letter to Sheriff of Northp. to send John Vyllars, a prisoner at Peterborough, to the lords of the Council.

† Public Notary and Register of the Dean and Chapter. His son Edmund, who bestowed the whole of his estate in pious and charitable uses, died at Paston in 1635.

(Page 51.)

NOTE.—When the Crown Office Act, 1877, was passed, the old commissions were called in. The Quorum clause in the commission of the peace has since been omitted. New commissions of Oyer and Terminer and Gaol delivery, to the like effect as those of 10 and 11 Vict. were issued at the same time.

The Commission of Oyer and Terminer.

Know ye that we have assigned you and *any four or more of you* our justices to inquire more fully by the oath of good and lawful men of the liberty of Peterborough in our county of Northampton by whom the truth of the matter may be better known and by other ways and methods by which you shall or may better know of all treasons, misprisions of treason, insurrections, rebellions, counterfeitings, washings, false coinings, and other falsities of the money of our United Kingdom of Great Britain and Ireland and other kingdoms or dominions whatsoever; and of all murders, felonies, manslaughters, killings, burglaries, rapes of women, unlawful meetings and conventicles, unlawful uttering of words, assemblies, misprisions, confederacies, false allegations, trespasses, riots, routs, retentions, escapes, contempts, falsities, negligences, concealments, maintenances, oppressions, champerties, deceits, and all other evil doings, offences, and injuries whatsoever; and also the accessories of them within the liberty aforesaid, by whomsoever and in what manner soever done, committed or perpetrated and by whom and to whom, when, how and after what manner of all other articles and circumstances concerning the premisses and every of them or any of them in any manner whatsoever; and the said treasons and other premisses *to hear and determine* according to the laws and customs of England; and therefore, we command you that at certain days and places which you or any four or more of you shall appoint for this purpose, you do make diligent inquiries about the premisses, and hear and determine all and singular the premisses and do and fulfil them in form aforesaid, doing therein what to justice appertains according to the laws and customs of England, saving to us the amerciaments and other things from hence to us accruing. Further we command by the tenor of these presents the bailiff of the liberty aforesaid, that at certain days and places which you or any four or more of you make known to him he cause to come before you or any four or more of you so many and such good and lawful men of the liberty aforesaid by whom the truth of the premisses may be better known and inquired into.

The Commission of Gaol Delivery.

Know ye that we have constituted you and *any three or more of you* our justices, to deliver our gaol within the Liberty of Peterborough, in our county of Northampton, of the prisoners therein being. And therefore we command that at certain days and places which you or any three or more of you shall appoint for this purpose you meet at the said liberty to deliver that gaol, doing therein what to justice appertains according to the laws and customs of our kingdom of England, saving to us the amerciaments and other things from hence to us accruing. Further we command the bailiff of the liberty aforesaid that at certain days and places which you or any three or more of you shall acquaint him with he cause all the prisoners of the same gaol and their attachments before you or any three or more of you to come.

These Commissions clearly establish the Liberty as an exclusive jurisdiction. Permanent Commissions, which continue during a reign, are not superseded by the ordinary

* That is the Queen's Justices. The Orier, who proclaims the opening of the Court invites those present to draw near and hearken while the Clerk reads the Commission of my lords the Queen's Justices. It was the practice of Counsel to address the chairman Sir, but as the King's justice he is entitled to be addressed as My Lord.

Commissions of Oyer and Terminer and General Gaol Delivery, which are in force only for a particular occasion. This rule is illustrated by an Act of 2 and 3 P. and M., c. 18, A.D. 1555, which recites that "Kings of the realm having granted commissions to the mayors recorders and other grave men of ancient and famous cities and towns corporate, not being counties of themselves, as well for the keeping of their peace as also for the delivery of the King's prisoners remaining in the gaol there; and after granting such commissions have granted other *like* commissions to worshipful and learned men of the shires for the keeping of their peace and also delivering of their prisoners remaining in gaol in the same shires, which commissions so bearing a later date have been a *supersedeas* and clear discharge unto the former commissions granted to the cities and towns corporate not being counties in themselves," and enacts that a commission of peace and gaol delivery for the shire shall not be a *supersedeas* to a former like commission granted to a city or town corporate.* Such towns not forming exclusive jurisdictions are parcel of the shire for all purposes, hence the supersession of the one commission by the like commission of a later date. But where the Court of King's Bench itself came into the shire, the rule was "*in presentia majoris cessat potestas minoris*," a rule which suspended gaol deliveries of Newgate, an inconvenience which was remedied by 25 Geo. III., c. 18, A.D. 1785, which enacts that the deliverance of the gaol of Newgate is not to be determined because of the essoign day of the term and sitting of the Court of King's Bench at Westminster.

The Commission of the Peace for the county has two assignments, (I) to keep and cause to be kept the King's peace, to enforce all ordinances and statutes, and to take sureties for good behaviour; (II) to enquire by jurors and to

* *Vide* Smith v. R., 1849, 13 Q. B., 738, where error was assigned by a prisoner convicted at the Quarter Sessions on the ground that the Judges of Assize were sitting under the Commission of Oyer and Terminer and General Gaol Delivery in the same county.

hear and determine. This is the assignment which empowers the justices of peace to hear indictments at Quarter Sessions.*

The Commission of oyer and terminer confers authority to try prisoners indicted for treasons, murders, and all manner of felonies and misdemeanours; by that of gaol delivery the justices assigned for the delivery are authorised to deliver every prisoner in gaol whose committal is tested for trial there.† All was fish that came to the net of the Liberty Justices; but the Abbots bailiffs were not wholly free from the meshes of the Sheriff, for under his supervision the hangings were conducted, before the charter of Henry VII. empowered the Abbot to appoint a Liberty Bailiff, who should have authority to issue summonses, to make distrains and returns, to execute writs, precepts, warrants, and all other processes and deliveries appertaining to the function of justices of gaol delivery and of justices of the peace. Thereafter the Bailiff could bring up the prisoners with their indictments, and to him the warrants for execution of judgment of death were directed.‡ And in the 15th century most crimes were felonies.

* Since the Crown Office Act, 1877, came into force, the famous *quorum* clause has been omitted. See *Merry Wives*, I. i. :-

Slender. In the county of Gloster, justice of peace, and *coram*.

Shallow. Ay, cousin Slender, and *Cust-alerum*.

Slender. Ay, and *rotulorum* too.

Justice Shallow confuses *coram*, in the presence of, with the *quorum*, and asserts that he was *Custos rotulorum*. In the old commissions poisoning, incantment, sorcery, magic arts, forestallings, ingrossings, extortions, and unlawful assemblies are named as offences. All these are replaced by the words "crimes, trespasses, and other offences" in the new commission. The Police Acts have relieved Justices of their duties relating to the keeping of the peace. By a Statutory Rule of 23 Feb. 1878, the same form of county commission is to be used for liberties of the Cinque Ports, Peterborough, Ripon, the Tower of London, Westminster, the Isle of Ely, and the town and county of Haverfordwest. All the old English shires are not identical with counties, e.g., Richmondshire, Riponshire, and Hallamshire. Haverfordwest is a county of a town with a lord-lieutenant of its own, and the town justices act under the county commission. The Liberty of the Tower was united to the County of London by an Order in Council, in 1894.

† This commission confers no authority to try prisoners directed by statute to be dealt with by the court of Quarter Sessions. *R. v. Ward*, 15 Cox C.C. 321. But the Liberty Justices, acting both as justices of the peace and of gaol delivery, exercise their powers under both commissions at the same time. The Treason Act of 1351 specifies five heads of treason, to compass the death of the King, to levy war, &c. Petit treason was where a woman kills her husband, a clerk his Bishop, &c. In 1415, clipping and filing money was made treason; see K. Henry V. at Agincourt. "It is no English treason to out French crows; and to-morrow the King himself will be a clipper." In 1530, to kill by poisoning was made treason. The convict was boiled to death without benefit of clergy.

‡ The patent of the justices assigned to deliver the Liberty gaol, in 1436, directs the Sheriff of Northamptonshire to bring up the prisoners for trial before them. Clause 2 of Henry VII.'s charter relates to the authority of the Bailiff. The Bailiff, like the Sheriff, is responsible for minor officers, and was for preservation of peace within the limits of the Liberty. He was not obliged to attend upon justices of assize or gaol delivery of the shire; but in franchises, where the bailiff has been so used to attend, he has to assist the sheriff at all courts of gaol delivery for the execution of prisoners. *Sheriffs' Act*, 1887, sec. 35.

The distinction between felonies and misdemeanours is not so clear as it should be. Felony imports some offence against the King's peace, offering some act of violence. If the offence comprises no external act of violence whereof the Common Law could conclude it against the peace, it is a misdemeanour, such as secret acts and fraud. Cromwell spoke well on this muddle in his speech to Parliament: "There is a general grievance in the nation. It is the law. To hang a man for sixpence, threepence, I know not what, to hang for a trifle and pardon murder is through the ill framing of the law. I have known in my experience abominable murderers quitted, and to see men lose their lives for petty matters. This is a thing that God will reckon for."

A prisoner charged with felony has twenty peremptory challenges, or may challenge any number for cause, or the array for partiality in the sheriff. The indictment is preferred before the grand jury, of at least twelve, to inquire, by examination of the witnesses whether the proof be sufficient to put the prisoner on his trial by the petty jury; as they determine they hand down to the court *True Bill*, or, *No True Bill*.* Thus there is an inquest and a trial by at least 24 men before the prisoner can be convicted.

* See Clarence's questions to his murderers, *Richard III.*, I. iv.

"Where is the evidence that doth accuse me?
What lawful quest hath given their verdict up
Unto the frowning judge . . . ?"

The "quest" here refers to the petit-jury of life and death, the sworn twelve. The precept to the Sheriff directed him "to cause to come 24 good and law-worthy men of each hundred in his bailiwick and 24 Knights and other honest and law-worthy men from the county at large." Outlaws, aliens, &c., were not law-worthy. Challenges might be for the shire or the hundred. The Liberty is under the old law relating to jurors. The grand jury, chosen from the county at large, are sworn to diligently inquire and true presentment make; the King's counsel and their own to keep secret, &c. They have nothing to do with defence. The witnesses were, before 1850, sworn in open court, but since in presence of the grand jurors.

CHAPTER V.

The style of the Court. The Hundred of the Vill. Clergy on the Bench. The Gaol. The Earl of Exeter. Gaol Fever. Dr. Lettison's Report. The New Gaol Act. Pardons. Recruits for the Army. Repeal by Scire facias. Retorna Brevium. The English Record. Writ de bono et malo. Peine forte et dure. The Assizes. The discharge of prisoners by Proclamation.

The "Sessions of the Peace and Court of Oyer and Terminer and General Gaol delivery" of the Justices of the Liberty is holden quarterly. Precepts, signed by four Justices, are issued after each court, directing the Bailiff to summon men liable to serve as jurors in the Liberty to be in attendance at the next sessions, a duty which exempts them from service as jurors in the county at large.* The reading of the three commissions which opens the Court is followed by the charge to the Grand Jury, and the hearing and determining of the indictments which are found to be true bills. All offences committed within the limits of the hundred of Nassaburg, including the City of Peterborough, are tried. The Vill of Burgh formed of old a hundred distinct from the hundred of the Nesse, and as the Bishop's surrender to the Crown purports to relate only to the Nesse, the Dean and Chapter, in whom the fee of the vill was vested when the See was erected, have contended that the Liberty Justices had no jurisdiction there; but there never was a separate gaol delivery for the vill, nor did the Sheriff direct his mandates to the

* The trial of crimes by a jury was unknown before the Conquest. In old English law the jurymen were witnesses of fact, but now the triers of the truth of testimony of witnesses brought into court. The "next tree" for a thief "taken with the manner" was the English fashion.

bailiff of the vill. The Court Rolls of the Dean and Chapter relate to the "Turnus sive visus Francpleg. hundrede de Villa de Burgh," the style of a Court Leete; this is supported by the exemption which the citizens enjoyed from doing suit and service at the Court Leete of the Nesse held at Lang-dyke.* The Liberty coroner has always executed his office in the City, and the charter of Henry VII. cannot be construed to exclude any part of the Abbot's domains from the bailiwick of the bailiff invested with the authority of a sheriff. The Canons, whose residences are extra-parochial, were misled by their jealousy about the exemption of the Precincts from civil burdens. They were generally in the Commission of the Peace, and it is owing to clerks that the Justices have shown some timidity about exercising their authority. There were too many felonies without benefit of clergy to suit non-lay justices of gaol delivery. *Ecclesia non novit sanguinem*—so they ought not to adjudicate in capital charges.† The adjudication of crimes, which depend on the acts of persons charged, seldom presents any difficulty. Evidence is usually manifest, and under the benign criminal law of England no judge can now experience reluctance to pronounce sentence. When the theft of a horse brought the thief to the gallows, the bench was no easy seat for a Canon.

Mr. Timothy Neve, on July 14, 1731, wrote to Dr. Lockyer, the Dean, who was then at Hansworth, "Ye horse stealer in ye jail is like to escape, for their worships had not courage to try him. The prosecutor came with his witnesses a long way off, but when ye justices refused to try ye felon they would have bound ye prosecutor in fresh bonds of recognizance which he refused as illegal and unreasonable. Mr. Wildbore insisted upon it that he ought to be tried then and that ye justices are

* In a suit between the Dean and Chapter and Lord Exeter, in 1714, a feigned issue was agreed upon to be tried out at the summer Assizes at Northampton, but there was no adjudication in the action, the Judge probably doubting if his commission extended to the hearing of fictitious suits.

† Archbishop Cranmer sat in Council to pronounce a sentence of death. In the Earl of Danby's case, 1678, the H. of L. resolved "that the lords spiritual have a right to sit in court in capital cases till the Court proceeds to the vote of guilty or not guilty."

compellable, so they adjourned ye sessions to that day fortnight, and now there's a quære whether a criminal can be tried at an adjourned sessions."*

The Liberty clerk ought to have put that matter out of doubt. But a term of imprisonment in the old gaol was very likely to be the doom of a felon. The Lord of the Liberty took little care of that noisome building, although bound by law to provide a secure and sufficient gaol, a burden coeval with the franchise. There were few prisoners, and promises postponed the reparation of the ruinous fabric till 1795, when clamour of the town induced some one to indict the Earl of Exeter. The indictment was heard in the King's Bench on June 20 of that year. The first count alleged that the Liberty is and has been immemorially an ancient Liberty within which there has been time out of mind an ancient and common gaol for debtors, felons, and other offenders. That the defendant is and his predecessors were lords of the Liberty, and have immemorially and of right ought to repair the said ancient and common gaol. That the gaol is decayed and ruinous. A verdict of guilty was found.† So the Earl or his successors repaired till 1839, when an Act was obtained for the building of a new gaol at the public charge.

2 and 3 Vict., c. 57, recites that "the common gaol situate in the Minster yard in the city or borough of Saint Peter otherwise Peterborough and the house of correction situate in or adjoining to Cumbergate Street in the parish of Saint John the Baptist in the said city, are distinct and separate buildings of great antiquity, inconveniently situated and ill constructed. And whereas it will be of great public utility if a new gaol and house of correction be consolidated and comprised in one building and erected in a more open and airy part of the said

* *Ians. MSS.*, 841.

† *K. B., T. T.*, 35 Geo. III., June 20. After 23 Hy. VIII., c. 2, the charge of maintaining County gaols was on the Sheriff, who had an allowance for the expenses in his accounts with the Exchequer. In 1768, the Bishop of Ely had a similar contest with the inhabitants of the Isle. Dr. Mawson submitted and repaired. By 14 Elis., c. 6, the Justices were to rate parishes towards the relief of the prisoners in the common gaol, the tax not to exceed 8d. per week.

city"; and provides that the Marquis of Exeter shall pay £500 to the Liberty fund, and his estates shall be discharged from all dues and services respecting the gaol; Further that "the Justices shall raise money for purposes of the Act by taxation of all lands houses buildings tenements and hereditaments within the liberty and hundred (except the Cathedral Church and all churches chapels and burial grounds and places of religious worship tolerated by law) or of all and every the owners or occupiers in right thereof respectively in equal proportions according to their respective worth and value; the said sum of money to be raised from each parish township and precinct and extra-parochial place within the said liberty, in like manner as the money now raised for the maintenance of the poor, the overseers of the poor to collect and the sum to be raised for building the gaol not to exceed ten thousand pounds. For securing free circulation of air about the gaol an open space of at least 50 feet in width to remain unbuilt on; if a street adjoins the prison walls then not to be of less width than 30 feet."

Ventilation is important. Pringle, in a treatise on Diseases of the Army, did a great public service in 1774 by describing the formidable gaol or hospital fever, which is the inseparable attendant of foul air and animal corruptions, and Dr. Lettson visited and reported on this gloomy gaol in 1805, thus :—

Peterborough Gaol for the Liberty called the Soke, wch contains 82 towns, is the property of Lord Exeter.* It is now also the prison of the D. and Chapter of P. Gaoler Will. Millwood. Salary, £30, fees 6s. 8d., the table neither signed nor dated.† A small court, 21 yards by 7 with a pump and a necessary in it. Three dungeons about four yards square each, two of them are four steps below the ground, and the third two steps, with stone floors and no fire-places, built under the arches of the old Minster. One of these dungeons is called the gaol room, and the window being stopped up, there is only an iron-grated aperture in the door, 10 inches by 7 for the admission of light and air. The other two dungeons have each an iron-grating over the door. The boards on which prisoners sleep are raised two feet above the floor, which would otherwise be very damp, there being no fire-place.

* The area of the Liberty contains 53,464 acres, in fourteen parishes. The Liberty police force is distinct from that of the County.

† Lettson on Prisons, *Gent. Mag.*, 1805, vol. 75. 31 Geo. III., c. 46, for Visiting Justices to sign a table of fees to be taken by the gaoler.

The Soke allows straw, 2 blankets and a rug to each prisoner. As there is only one court, the two prisoners (a man and a woman) were together in it when I was there. Allowance to felons 6^d. a day. Surgeon, Mr. Beetham, makes a bill. Chaplain, Rev^d. John Wodred, as vicar of St. John the Baptist, to those under sentence of death. This gaol has no regular chaplain. nor religious attentions.

Debtors have a spacious good room up stairs, and if the keeper furnishes a bed, pay 2^s. 4^d. a week. They have no allowance. No employment provided for any. The gaol is very clean. Number of prisoners, Aug. 9. 1802, two.

Peterborough Bridewell, for the Soke, has on the ground floor a room about 7 yards long and 7 feet wide, formerly a work shop, which opens into a narrow slip or court 9 feet 4 in., not secure, and the prisoners always locked up have not the use of it. No necessary. No water accessible to the prisoners. Neither the Act for the preservation of health nor the clauses against spirituous liquours hung up. Two sleeping rooms 9 feet by 6, close and ill ventilated. The Soke allows straw on plank bedsteads, two blankets and a rug to each prisoner. No employment, the gaol being too dark to admit of any. When a person is committed to hard labour he beats hemp in a dirty room which leads to the prison. No religious attention. If a surgeon is wanted Mr. Beetham attends. The Keeper, John White a pensioner; salary £8, and commitment fee 3^s. 6^d. Allowance 6^d. a day. The whole prison must be more unhealthy, and is not much cleaner, than a pig-sty. Prisoners, Aug. 9, 1802, three.

The old Cemetery of the Abbey and parish of St. John the Baptist, afforded a convenient refuge for prisoners escaping from the gaol. The sanctuary man and outlaw, often practised in archery, gave the hint to the State of a supply of recruits for the defence of the realm. An Act of 1530, 22 Hy. VIII., c. 4, concerning abjurations and sanctuaries, enacted that able and apt men for the wars, who for tuition of their lives have fled to churches and halowed places and have abjured the realm, should thereafter be prest for service against the King's enemies.* This is the origin of the gaol-bird recruit, who became so notorious and made the name of old soldier a reproach. Michael had a poor chance when home from the wars. A proclamation of 1563, announcing the return of the Queen's army, proclaimed that

Her Maty doubteth not but all theis her trew and good and vallyant subjects having thus served and now returned to their habitations shall find at this tyme as they have well merited favour and charitable succor according to their estate and hereafter honor love and praise of their cuntry whilst they live.

* A.D. 1560. In an Array of Neasborough Hundred 686 men were enrolled, and in Northampton town 181 men. Men liable to serve within their own country for the defence of the same against invasion, or attempts of foreign powers, to the number of 8,544, over and besides the 500 armed men which went out of the county the same year to the borders of Scotland.

Old soldiers were, "for the town's end, to beg during life." They could not live upon praise, and must have been very poor or would have escaped the Muster-master, who, like Falstaff, "misused the King's press damnably."* In the 16th century it became the fashion to recruit from the gaols. In 1592, Sir John Norris was authorised to enlist prisoners, "We being given to understand that their are presentlie remaining imprisoned in the common gaoles certain persons for some causes criminal though of no great moment and importance yet such as by rigor of law may prove dangerous and capital unto them upon their trial."

The prison press-gang became odious, and the convict recruit a terror. But there was a general sense that the death penalty for theft was unnecessary and cruel, hence the practice of beating the gaols continued, in spite of the desertions. A circuit list of prisoners, fit for royal pardon, was then pretty long, but pardons were granted with a proviso for transportation to the King's dominion beyond seas or for service against his enemies. The Liberty records afford instances of pardons with a proviso for transportation or for military service. The practice was for the Justices to certify fit cases to the Secretary for State.

A woman was pardoned for horse stealing in 1661.†

To the King's most excellent Ma^{tie}.

The humble peticon of Mary Dixon the wife of James Dixon of Whittlesey
and in the Isle of Ely labourer.

Humbly Sheweth

That yor poore petitioner at a General Quarter Sessions of the Peace and Oyer and Terminer holden for the Liberty for the Hundred of Nassaborough in the County of Northampton the fourteenth day of October last was indicted and convicted for the felonious stealing and taking away of one bay gelding of the price of foure pounds of the goods and chattels of one Thomas Cooke and after such conviction had sentence of the Court passed upon her to be hanged till death and is not to be avoyded by the strictness of the lawe although it appeareth by the certificate hereunder annexed that yor petitioner is a fit object of yor Maty's mercede.

* Aug., 1592. Q. to Sheriffs. 4 and 5 P. and M. recites that "the most likely men for the service have been through friendship or rewards released and others not being able or meet chosen thereunto." Falstaff was ashamed to march through Coventry with his company because "the villains march wide betwixt the legs, as if they had gyves on; for, indeed, I had the most of them out of prison." Hy. IV. Pt. I. 4, 2.

† Certificate wanting. Dom. Car. I., vol. 519.

Yor petitioner humbly prayes that yor Mat^{ty} would be pleased to grant unto yor poore pet^r yor Maty's most gracious pardon for the said offence. And she shall as ever bound &c. pray.

1661. Dec^r. Warrant for a pardon to Mary Dixon of Whittlesea for horse stealing with restitution of forfeitures.*

A.D. 1672.

"To our Commissioners and Justices of Oyer and Terminer for the Sessions and gaol delivery in the Liberty of Peterborough.

"Whereas we are informed that Richard Watson was at the last sessions of the Peace and General Gaol Delivery held for the Liberty of Peterborough in our county of Northampton convicted of the felonious stealing of three horses for which sentence of death hath passed upon him and whereas you Our Commissioners and Justices of Oyer and Terminer for the said Liberty before whom the said Watson was tried have certified that you conceive him qualified for Our grace and favour so far as to be transported into some of Our forraigne plantations We have thereupon thought fit to signify Our pleasure unto you on his behalf and do hereby require that you forbear putting in execution the said sentence of death upon him ye said Richard Watson for the crime aforesaid but that you grant him his liberty upon security to sue forth his pardon before the next Sessions And that in regard he is a poore man he be inserted in the next pardon for the Midland Circuit and comprehended within the proviso for transportation And for so doing this shall be your warrant Given at Our court at Whitehall the 16 July 1672."

In 1709 the Commissioners of Gaol Delivery reprieved John Wheatley, and sent up their certificate of his fitness for the Queen's grace.

Libertas de Burgo
St. Petri in Com.
Northton.

In the Act passed last Sessions of Parlt^y entitled an Act for punishing mutinye and desertion there is a clause which sayth that such persons as are convicted of capital felonies that are thought fit to be reprieved from execution in order to obtain her mat^{ty} pardon as fit to serve in her army &c. may be listed into H.M. service upon producing a warrant under H.M. sign manual for the inserting such person in a pardon

* At common law all felonies caused forfeit of goods and chattels and some of lands. A crime may be a felony and without capital punishment, e.g., manslaughter, or capital though no felony and working no forfeit, e.g., standing mutes.

afterwards to be passed. We thought it proper to inform you that there was one John Wheatley afd about 18 or 19, convicted before us at an adjourned sessions of the peace and gaol delivery held on thursday the 28 of July last for this liberty for the stealing of a mare, which said John Wheatley is already listed into H.M. service and is very likely to doe good service therein;* upon consideration thereof we have reprieved him from execution and doe desire yr assistance for the procuring H.M. warrant for the passing his pardon upon the sight of which we will deliver him to his Captain and return the warrant to such person as you shall direct.

Given at Peterborough this first day of Aug. in the 8 year of the reign of our gracious Maty Q. Anne. Anno Dom. 1709.

To the hon^l Robert Walpole esq.
Secretary of Warr.
of Livesay's Reg^t.

Noah Neale, chairman.
George Leafeld.
Charles Parker.
Rob^t. Crompton.†

The prisoner's petition was as follows:—

To the Queen's most Excellent Majestie. The humble petition
of John Wheatley.

Sheweth

That your petitioner being condemned at Peterburrow last sessions holden for the Soake for stealing a mare of three pounds value and having been a soldier in yor Mat^{ies} army and this being the first offence your petitioner has committed and being recommended as an object of compassion by the justices of the peace of the said Soake.

Yor poore petn^r humbly prays that yor Mat^{ie} would be graciously pleased to grant yor pardon to yor poor petn^r soe that he may be enabled to serve y^r Mat^{ies} in yor army again.

Lord Cardigan took a good deal of trouble to save this prisoner. The warrant for the royal pardon was issued, but it was through inadvertence directed to the justice of gaol delivery for the County at large, who had no jurisdiction in the Liberty, and to this Lord Exeter took exception.

Deene, Oct. 15, 1709.

Sir,

I give you many thanks for the favour you shewed me in procuring her Maty's warrant for a pardon for John Wheatley which warrant when I had I went with it to my Lo. Of. Justice Trevor to whom it was directed as judge of assize for this circuit but when I made him acquainted that this man was not tried at the assizes for the county of Northampton but within the Liberty of Peterborrow where my Lord Exeter has a power of trying capital offences at the Sessions he holds there, his Lordship told me he could not tell what to do in it till he had spoke with you which he promised to do when you came to Towne, now since I have been here my Lord Exeter has shewed me severall warrants for pardons and the warrant alwaies directed to him instead of to the Justices of Assize. Now I would earnestly beg of you to speak to my Lo. C. J. Trevor about this matter and hope you will be so kind to procure a new warrant from the Queen directed

* In 1708 the standard was 5 ft. 5 in. The Council sent orders round to beat the gaols; bounty of £4 for volunteers.

† S. P., Dom. Anne. B. 18.

to my Lo. Exeter to deliver this man to a proper officer in H.M. service. I am very sorry to give you this fresh trouble but the nature of this affair is so particular that I hope will plead an excuse.

I am, Sir,

Your most obedient humble Servant,
Cardigan.

Doubtless a fresh warrant was issued; but on 24 Dec., Lord Cardigan was still urging good speed, because the poor condemned man was in danger of being executed within a fortnight if the warrant were not directed to my Lord Exeter or his deputy.*

All courses have been tried to avoid compulsory service, but, in spite of "cote conduct money and bounties," the Deputy Lieutenants were not able in the 17th century to bring up half the men requisitioned by the State. In 1640, the recruiting officers reported "only half the number wanted, very ill persons, very poor and ragged, and no coats ready for them."

Better the press-gang and "reapers, people ingrost by swift impress," than the convict recruit. Cast out of the home service, he was tried in the colonies, but the commanding officers of the several corps abroad solicited the Secretary for War not to send convicts to their regiments. Captain Giles of the Marines, at Gibraltar in 1709, discharged the whole batch of convicts sent to his command, and the Governor and garrison of Senegal protested against the importation of 19 felons to that fort, "desperate villains capable of forming and executing a fatal enterprise. Nineteen sturdy cut-throats might in one night murder the Governor, the four military officers and the rest of the garrison and seize on all the merchandize and stores."

Not fit food for powder, leave them for the pillory† and gibbet, "to creak against the senseless wind." The gallows, the means to deprive a culprit of life, should not

* H. O., Dom. Anne, B. 1, 15, 45. In 1774, Mr. John Wyldbore certified John Young and three others, convicted of horse stealing, as fit for pardon, being young men and very penitent.

† Judgment to stand in the pillory was ended by 7 Will. IV., and 1 Vict., c. 23. "With ears nailed" was ordered for notorious offenders.

be confused with gibbeting or hanging in chains after death, "in terrorem." Matthew Paris, A.D. 1236, refers to the practice of gibbeting of two men, "one of them after he was dead was hung upon a gibbet and the other was gibbeted alive, to perish by pain and hunger." Shakspeare reminds his villain of "the foul fiend Flibbertigibbet," and his heroine rather than be false will make her "country's high pyramids my gibbet, And hang me up in chains." But this inveterate practice was no part of the sentence till 1752. The Act of 25 Geo. II., c. 37, for the better preventing the horrid crime of murder, authorised the judge to order the body to be anatomized or to be hung in chains, according to the practice for the most atrocious offences.

The gibbets were erected near the spot where a crime was committed. A post-mortem may be a singular comfort to the kindred of a murdered man, but it was often a horror to those of the murderer who were not responsible for his act. Lowen was hung in chains on Turnham Green, in front of his widow's house, who petitioned against "being obliged to view the sight of so miserable an object, more terrible than words can express."* The condemned, who heard a sentence of death with tranquillity, betrayed fear when the workman came to measure them for the chains; they could not bear the thought of being exposed as a spectacle to the public and having their names perpetuated with infamy.†

Women were never gibbeted. Newgate prisoners in the 18th century were hanged at Execution Dock in the Isle of Dogs. The gibbets of pirates down the Thames were common then; the only occupants of the site. In 1536, Ashe was hung in chains; in 1628, Felton, the assassin of the Duke of Buckingham. George Atkins, who murdered R. Foster, wife, and child, was gibbeted on Caxton Common in 1678.

In the course of seven centuries, during which the Abbot and Convent controlled this franchise, it has happened that their

* Dom. Anna. B. 10, 49.

† Captain Lowry, 1762.

privileges were liable to be revoked for neglect to exercise them pursuant to the common law of the realm and in obedience to the King's Writ. *Retorna brevium*, the return of writs within the Liberty, was a burdensome privilege. The Abbot was responsible for all defaults of his bailiff, for escapes and for omission to account. It was a feather in his cap, but a thorn in his foot. A writ dated 29 July, 1342, from the Tower, reminded that Abbot of a *scire facias*. A fine of 2,500 marks had been imposed on certain officers for wastes, trespasses, and excesses in the forests of Rockingham, Salcey, and Whittlewood, which, in part, lay within the Eight Hundreds. "Show all diligence in collection of the fine and levy before the Octaves of the Assumption and deliver it to the Sheriff of Northampton so that we may not have cause to punish you for default for we learn that your Bailiff has a full return of all our writs and ought to execute them in the liberty but has not cared to levy any part of the fine. We warn you and your bailiff, upon pain of the loss of your franchise, to obey and failing the sheriff shall enter and take the franchise into our hand and cause you and the bailiff to be seized as disobedient and kept in prison."* This privilege was revived in favour of the Bishop of Peterborough, and thus passed with the surrender and regrant to Lord Burghley. A similar privilege at Cirencester was revived in gross in favour of a lay grantee whose successors in the 17th century had a suit with the Sheriff of Gloucester.† The return of writs does not ordinarily apply where the Sheriff acts in the King's suit, or when a writ is directed to him with a "*non omittas propter aliquam libertatem*" clause. L.C. Baron Hale said in course of his judgment,

All process should go with a "*non omittas*." It would avoid a great delay of justice, much vexation and grievous wrongs, and would do more good to the Kingdom than all the liberties of *retorna brevium* have been these 1000 years, for as they are used now they are nothing but a foundation of brocade. First the party must go to the sheriff and there

* Cl. R., 16 E. III., Pt. I, m. 1d.

† Sir Rob: Atkins v. Clare. Ventris 390.

he is handled; then through another purgatory to the bailiff of the liberty, and there he is handled; and then to the under bailiff and there he is handled; and so to the sheriff again.

This privilege is now regulated by the Sheriffs' Act, 1887, which enacts that

Where a lord of any franchise has the return or execution of writs or other duties of a sheriff, the bailiff of the franchise either to hold the office himself or put in bailiffs having land sufficient to answer the King and shall answer for such under bailiffs.

2 The sheriff to appoint a deputy to reside near the franchise.

3 The deputy to receive open writs the return of which belongs to the bailiff, and to issue warrants under the sheriff's seal for due execution of such writs.

4 The bailiff of the franchise to answer for non-execution, mis-execution, or insufficient return.

By a charter of Henry III., Cl. R. 12 Hy. III. m. 7, the Convent were authorised to collect all the King's dues throughout the Liberty and all their domains, "*et respondere per manus suas ad scaccarium nostrum.*" The Abbot was often at war with the Sheriff about this direct return to the Exchequer.

Extracts from the mediæval records of the Liberty have been noticed in the Latin tongue, and that was the language of the record till 1733, and of all documents filed with the Court; and pleadings were then of awful and mysterious portent. This was remedied by 4 Geo. III., c. 26, A.D., which recites the royal desire to remedy the great mischief which happens to the King's subjects from the proceedings in courts of justice being in an unknown tongue, those who are summoned and impleaded having no knowledge of what is alleged against them in the pleadings of their lawyers or attorneys, who use a character not legible to any but persons practising the law: and enacts that after Lady-day, 1733, all writs, process and returns thereof, all pleadings, indictments, informations, presentments, &c., all patents, charters, pardons, commissions, records, judgments, statutes, &c., and all proceedings relating thereto, and all proceedings of courts leet, courts baron and customary courts, shall be in the English tongue, and shall be written in a common legible hand and character, as the Acts of Parliament are usually engrossed in, and the lines and words of the same to be written at least as close as the said Acts usually are, and not in any hand commonly called court hand, and in words at length and not abbreviated.*

* Convictions by Justices, when recorded and filed, were in Latin, as all records were by the Statute of Edw. III., A.D. 1362. They may be drawn up on paper, S. J. Act, 1848, sec. 17; so may Coroner's inquisitions, unless they be of murder or manslaughter. 50 and 51, V. c. 71, sec. 18.

Law French was nominally supplanted in oral proceedings of law courts in 1362, by 36 E. III., s. 1, c. 15, which recites the great mischiefs caused by use of "la lange Franceis" in the courts, and the grumblings of the suitors because they "nont entendement ne conusance de ce qest dit pur eux ne contre eux par lour sergeantz et autres pledours." The English yeoman, amazed at the jargon of the lawyers, exclaimed, as they did in France, "Retournons a nos moutons." He had paid fees to hear his own case pleaded, and he heard of nothing but the court precedents and practice, and that may happen to a suitor now, where the suitor's case is covered by authority. The argument is to get out of that, for the law should never be inconsistent, though suitors may suffer thereby.

The change of language was very slow. Legal conceits were not expressible in English. It was easier to command the lawyer to plead, open, defend, debate, and adjudge in English than for him to do it. He managed it by transferring many French verbs to our tongue. The technical language of law indicates the stubborn resistance to change for good or evil. Not twenty English words occur in the Year Books, which are reports of cases in the 14th century. Nor did the change purport to extend to arguments of points of law, which were fought out in French as late as the reign of Charles II., but English was used in all matters of fact for the jury.*

So the old practice of the criminal law is not easy to master. The "appeal" might be brought within a year and a day after the crime was committed, and if acquitted he could not be put in peril again, but *contra* if indicted first. This accounts for the entry on the record, "non tulit breve regis de bono et malo ideo retornatus gaolee," i.e., for a year

* A Proclamation of 1546 licensed Justices of Assize to appoint pleaders if there were none present who had been "readers" in an Inn of Court. "It is further ordered at his Majesty's pleasure that if before his justices of Assize and Nisi Prius in their Assizes and Sessions there be no learned men present in their circuits they may and shall appoint such other learned men to be of Counsel with the parties as shall be thought meete for that time." In 1573, at Oakham Assize, coram Blackburn, J., a prisoner was represented by a Solicitor, who, after notifying that Court that no Counsel was in attendance to be briefed, was allowed to address the Jury for the defence. Reg. v. Smith. Counsel for the Prosecution, Gaches.

when the special writ *de bono et malo* was issued to authorise trial of a prisoner in the gaol. Abuses sprang from the year and a day delay, hence the Act of 3 Hy. VII., c. 1, A.D. 1487,* which recites :—

It is used that within the year and a day after any death or murder had or done, the felony should not be determined by the King's suit, for saving of the party's suit, wherein the party is oftentimes slow and also agreed with and by the end of the year all is forgotten, which is another occasion of murder. And enacts, the King's suit is not to tarry the year and day for any appeal to be taken, but the prisoner if acquitted shall be remitted to prison till the year and day be passed and the acquittal on indictment is not to be a bar to the appeal.

This made an end of the writ "*de bono et malo super patriam inde ponere volueritis se deliberetis*"; but it was not till 1827 that a bare plea of Not Guilty sufficed to put the prisoner at the bar upon the country for trial.† 7 and 8 Geo. IV., c. 28, which recites that criminal trials are attended with forms which impede due administration of justice, abolished such forms and the benefit of clergy, enacts that by a plea of Not Guilty the prisoner shall be deemed to have put himself upon the country for trial; but standing mute was a capital offence, visited with "*peine forte et dure*" till the hardy prisoner expired, supporting himself that by his sufferings he saved his lands for his heir.‡ An Act of 12 Geo. III., c. 20, abolished "*peine forte et dure*," and enacted that persons standing mute on their arraignment on an indictment or appeal for felony should be convicted by the Court, and judgment awarded as if the prisoner were convicted by verdict or confession, and by 7 and 8 Geo. IV., c. 28, when a prisoner refuses to plead the Court is to order a plea of Not Guilty to be entered.§

* Thus, by 3 Hy. VII., the prisoner was arraigned within the year, but if acquitted was not discharged till the year and a day past. So *autrefois acquit* was no bar to an appeal, but acquit on an appeal was a bar to an indictment; and *autrefois convict* was a bar to an appeal, but, in practice, judgment was respited if an appeal was entered.

† The country, *i.e.*, the hundred from which the jurors were drawn till 1826, when the Jurors Act enlarged the *venire* to the county.

‡ In 1658, Dr. Hewitt was sentenced to death as a mute for refusing to plead and acknowledge the authority of the High Court of Justice.

§ The lands of convicts were held by the King for one year and a day, and then delivered to the Lord of the fee. An instance occurs in the Close Rolls, 19 E., III., pt. 1, m. 7, A.D. 1346. "A writ addressed to the Sheriff of Lincolnshire directed him to put the Abbot in seisin of 2 acres in Gosberkirk, which Thomas son of E. de G. held, who was hanged for felony, the land having been in the King's hand for a year and a day, and Thomas held of the Abbot. And Ralph de Bury who had the year day and waste thereof must account."

The Act of 1 Geo. IV., c. 14, which enables the Liberty Justices to commit offenders charged with capital offences* to the gaol of the County, was, in 1903, put in force in the case of a woman who murdered two children at Peterborough. Probably a lay Chairman hesitates to proceed to judgment of life. Should there be a trained lawyer to preside, there seems no objection to exercising the jurisdiction of the Liberty Justices, and as the Prisons Acts make the County gaol a part of the Liberty for purposes of jurisdiction, and in no way give the Sheriff authority over the Liberty prisoners, the Bailiff of the Liberty is authorised to control an execution at Northampton. The abolition of the Liberty gaol and consequent detention till trial of prisoners at Northampton, was not understood by the Sheriff and Gaoler, who, in 1879, entered the Liberty prisoners in the calendar for delivery by the Judge of Assize, and he sent the bills before the Grand Jury. That was not warranted by law.† The commission of the Judge extends only to such prisoners who lie in gaol for their deliverance at the Assizes; whereas the Liberty prisoners are merely detained within the prison till time of trial by the Liberty Justices, pursuant to their committals.

It was the practice to clear the gaol, by Proclamation, of all prisoners who were not indicted, and whose committals were for offences triable only at Assizes, but where the offences are triable at Quarter Sessions, the Judge is not bound to discharge the prisoners by proclamation; he can continue on their committals till next Court of Quarter Sessions.‡ Where the committal is for trial at the Assizes, the Judge will discharge them, if not indicted, on their own recognizances.§

* All homicide is presumed to be murder. The frequent murders of Normans after the Conquest led to the rule that in every case the victim was to be deemed to be a Frenchman, and to have been murdered, unless the jury made a presentment of Englishry, i.e., that he was an Englishman. Presentment of Englishry was abolished in 1340, by 14 E. III., St. 1, c. 4, but the presumption has survived.

† The Court having no jurisdiction, the sentence might have been quashed by issue of a writ of Habeas Corpus.

‡ Anon. 1810. E. and E. 173.

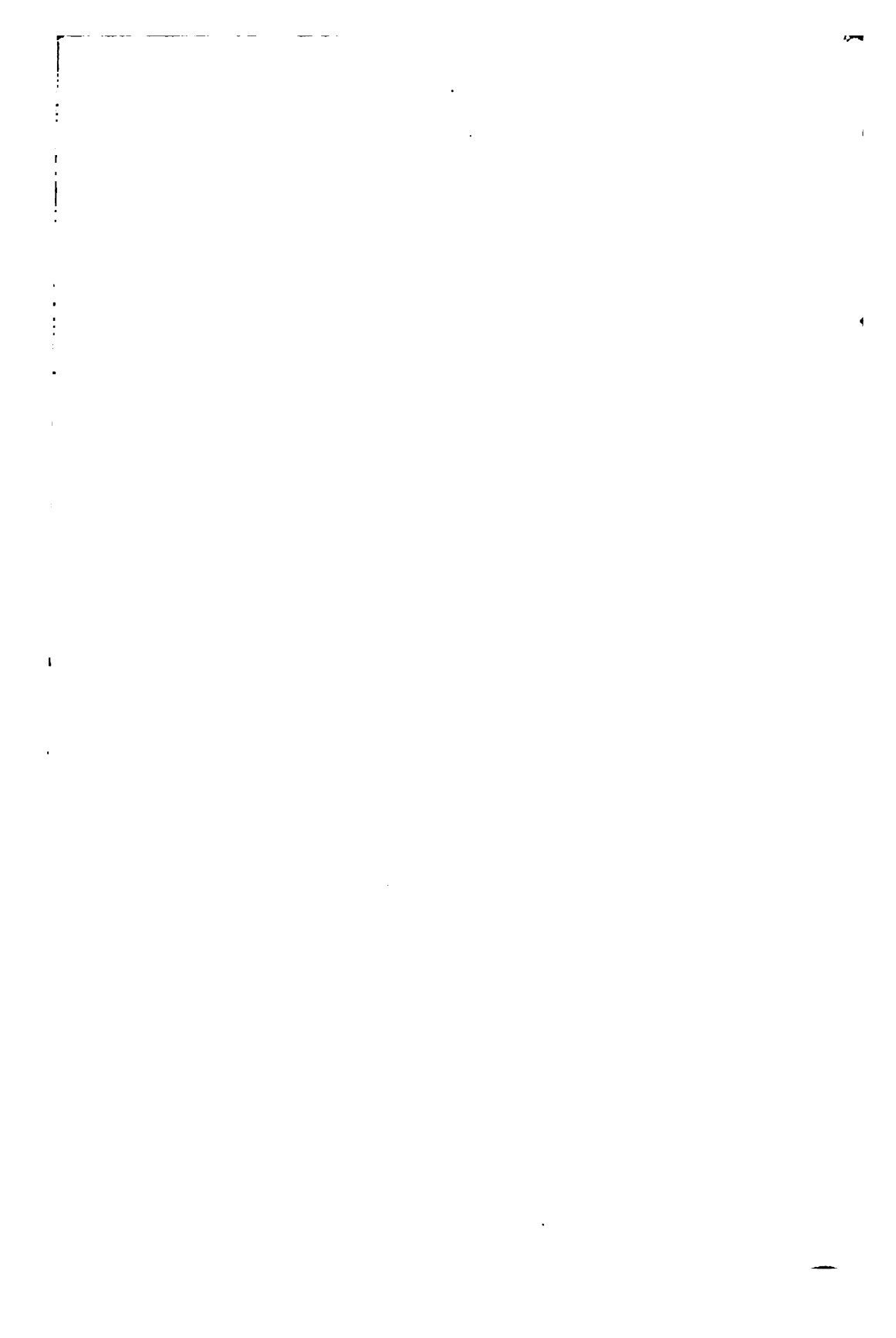
§ E. v. Arlet, 1848, 3 Cox, 431. Under the commission of O. and T. the JJ. proceed only on indictments taken before themselves. Their authority is ad inquirand. audiend. et terminand.; but under gaol delivery they try all prisoners, even when the indictments are found elsewhere.

We have recalled from the musty records all sorts of criminals ; those who were "convict by flight and rebel to all law," those who took their own easy way to die, and those who lived by the voice of him

Who had a tongue to doom his brother's death
And let that tongue grant pardon to a slave.

The Liberty has stood the test of time. What changes have come about in England during the centuries in which the records of its court have been compiling ! It has witnessed the mingling of the English and Norman races, the emancipation of the people, the destruction of the monasteries, the change of language and of dynasties, and survives, shorn of no whit of its authority.





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